



House of Commons  
Environment, Food and Rural  
Affairs Committee

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# The draft National Policy Statement for Hazardous Waste

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**Eleventh Report of Session 2010–12**

## *Volume I*

*Volume I: Report, together with formal  
minutes, oral and written evidence*

*Additional written evidence is contained in  
Volume II, available on the Committee website  
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## Environment, Food and Rural Affairs Committee

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# 1 Introduction

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## The Planning Act 2008 and National Policy Statements

1. The Planning Act 2008 introduced a new, streamlined planning regime for certain nationally significant infrastructure projects (NSIPs). Under the new regime, applications for development consent for NSIPs would be dealt with by a new body, the Infrastructure Planning Commission (IPC). In considering applications, the IPC would be guided by National Policy Statements, which set out Government policy on the need for such infrastructure and the principles that the IPC should apply when deciding whether to grant development consent.

2. The Localism Act 2011 contains provisions to abolish the Infrastructure Planning Commission.<sup>1</sup> Once these provisions come into effect, the IPC will be replaced by a Major Infrastructure Planning Unit (MIPU) which will sit within the Department for Communities and Local Government (CLG).<sup>2</sup> National Policy Statements will continue to be the framework for decision-making on proposed NSIPs, but the final decision on whether to grant development consent will be taken by Ministers. This report refers to the IPC as the decision-maker throughout, but our recommendations will apply equally to the new decision-making process set out in the Localism Act.

3. Defra published the draft National Policy Statement (NPS) for Hazardous Waste for consultation on 14 July 2011. Once finalised, this NPS will form the basis of the IPC's consideration of applications for large scale hazardous waste infrastructure. The draft NPS was accompanied by an Appraisal of Sustainability, Habitats Regulations Assessment, Equality Impact Assessment and Impact Assessment. The consultation ran for 14 weeks and Defra received 29 responses, the majority of which were submitted after we had concluded our oral evidence sessions. We were able to consider the consultation responses as part of our inquiry.

4. The Planning Act 2008 provides for Parliamentary Scrutiny of a draft National Policy Statement.<sup>3</sup> On 14 July we announced our inquiry and invited written evidence from interested parties. We held three oral evidence sessions during September and October 2011. We are grateful to those who participated in our inquiry.

5. Until recently, Standing Orders required Committees scrutinising draft National Policy Statements to report to the House no later than 39 days before the end of the "relevant period" for Parliamentary Scrutiny (this date is set by the Secretary of State when laying the draft NPS before Parliament).<sup>4</sup> This requirement has caused some difficulties for Committees, as the time constraints of conducting an inquiry and producing a report have usually required oral evidence sessions to be concluded before the Committee has had an opportunity to consider all of the responses to the Department's consultation. We are

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1 Localism Act 2011, section 128

2 Department for Communities and Local Government, *Major infrastructure planning reform: Work plan*, December 2010

3 Planning Act 2008, section 9

4 Standing Order 152H

pleased to note that during the course of this inquiry an amendment to the relevant Standing Order has been agreed which removes the requirement to report 39 days before the end of the relevant period.<sup>5</sup> This amendment took place some time after we had concluded oral evidence sessions and so we were not able to benefit from its provisions in our scrutiny of this draft NPS, but we welcome the increased flexibility that it will provide for the future scrutiny of draft National Policy Statements.

## Hazardous Waste

6. The draft NPS describes Hazardous Waste as waste that contains one or more hazardous properties that may cause harm to human health or the environment.<sup>6</sup> Some of this waste consists of everyday items such as computer monitors, televisions and refrigerators; other types of hazardous waste include asbestos, oil, acids and some batteries. The European Waste List, maintained by the European Commission, provides definitive guidance on which types of waste are deemed to be hazardous.<sup>7</sup>

7. Approximately 4.8 million tonnes of hazardous waste were produced in England and Wales in 2008<sup>8</sup> and the amount of hazardous waste produced (“arisings”) is expected to increase in future as the European Commission takes an increasingly precautionary approach to the classification of hazardous waste.<sup>9</sup>

## *Legislative and policy background*

8. In the UK, waste management policy is underpinned by the European Union’s Waste Framework Directive (WFD), which applies to both hazardous and non-hazardous waste.<sup>10</sup> A key principle of the WFD is the waste hierarchy, which lists five steps to be applied to the management of waste. In order of desirability, these steps are prevention, preparation for reuse, recycling, other recovery (including energy recovery), and disposal (with landfill considered the least desirable form of disposal). Member States are expected to take steps to move the management of waste up the waste hierarchy. Article 16 of the WFD sets out the “self-sufficiency principle” (that the EU and eventually individual Member States should become self-sufficient in waste disposal) and the “proximity principle” (that waste should be disposed of in proximity to where it is produced, where practical).

9. In March 2010 Defra published its Strategy For Hazardous Waste Management in England (“the 2010 Strategy”) which was conceived “to underpin the practical application of the revised Waste Framework Directive and in particular the requirements that apply to hazardous waste in relation to the waste hierarchy, the treatment of hazardous waste, and

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5 Votes and Proceedings, 30 November 2011, p 1052

6 Draft NPS, p 8, para 2.2.1

7 Commission Decision 2000/532/EC

8 Draft NPS, p 8, para 2.2.2

9 Draft NPS, p 14, para 3.27

10 European Parliament and Council Directive 2008/98/EC on waste and repealing certain Directives

the provision of infrastructure”.<sup>11</sup> The Strategy identified that new hazardous waste infrastructure would be required if the policy goals of the WFD were to be met.<sup>12</sup>

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11 Defra, *A Strategy for Hazardous Waste Management in England*, March 2010, p 4, para 1

12 Ibid, p 5, para 7

## 2 The draft National Policy Statement

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### Need

10. National Policy Statements are the means by which Government clearly sets out its policy on the national need for major infrastructure, thus removing the requirement for planners to establish the need for new infrastructure each time that a development is proposed. The draft NPS provides that the IPC should start its assessment of applications to develop infrastructure covered by the NPS on the basis that the need for this infrastructure has already been demonstrated.<sup>13</sup>

11. The draft NPS covers the following types of hazardous waste NSIPs:

- Waste electrical and electronic equipment (WEEE) plant
- Oil regeneration plant
- Treatment plant for air pollution control residues
- Thermal desorption<sup>14</sup>
- Bioremediation/ soil washing to treat contaminated soil diverted from landfill
- Ship recycling facilities
- Hazardous Waste landfill

12. With the exception of ship recycling facilities (the need for which was set out in the 2007 UK Ship Recycling Strategy) and hazardous waste landfill, the need for these infrastructure types was identified in the 2010 Strategy. The draft NPS explains that although current landfill capacity is sufficient, it is likely that planning permission for some sites will expire during the lifetime of the NPS, and that new sites will be required to replace them.<sup>15</sup>

13. Defra has drawn on Environment Agency data on hazardous waste arisings to inform the needs case for the specific facilities included in the draft NPS. At the time of publication of the draft, the most recently available data were from 2009. Defra noted that owing to the economic downturn these data were not thought to provide a good baseline for establishing future trends.<sup>16</sup> Since the draft NPS was published data from 2010 have become available, which the Environment Agency told us they were “actively sharing” with

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13 Draft NPS, p 12, para 3.1

14 The draft NPS describes thermal desorption as a process which uses heat to increase the volatility of contaminants such as oil so that they can be separated from a solid matrix such as soil, sludge or filter cake (p 30, para 4.17)

15 Draft NPS, p18, para 3.4.13

16 Draft NPS, p 13, para 3.2.2 (see footnote)

Defra.<sup>17</sup> Lord Taylor told us that this new data would be incorporated into the needs statement.<sup>18</sup>

14. The needs case also relies on an assessment of the capacity of installed and planned facilities. The Environmental Services Association noted the importance of having “very up-to-date information” on capacity<sup>19</sup> but we found it difficult to establish from the draft NPS exactly what evidence on capacity had been used to establish need. Defra explained that this assessment was based on work carried out with industry and experts in 2009 to inform the Strategy and had been updated to incorporate additional information before the draft NPS was published.<sup>20</sup> They did not intend to revisit this assessment before finalising the NPS but Lord Taylor suggested during oral evidence that data collection would be a “continuing process” and noted that the NPS would be revised in 2015.<sup>21</sup>

**15. The NPS should be amended so that it is clear on the face of the document what evidence has been used to underpin the assessment of need, particularly in relation to capacity. We welcome the Minister’s reassurance that data collection will be an ongoing process and we recommend that Defra review its most recent assessment of installed and planned capacity before the NPS is first reviewed.**

### Scope and clarity

16. Applicants are charged fees to cover the costs to the IPC of processing an application.<sup>22</sup> The ESA told us that they believed that for some small facilities the cost of applying for development consent through the IPC could be “between six and sixteen times more” than a straightforward application under the Town and Country Planning Act. They noted, however, that if an application under the Town and Country Planning Act went to appeal, the costs would probably be similar to an application to the IPC.<sup>23</sup>

17. The Impact Assessment accompanying the draft NPS acknowledges the overall increase in fees for applications to the IPC but states that “this is more than offset by the wider benefits of the new regime”, which include the savings developers will make by avoiding lengthy planning inquiries with their associated legal costs.<sup>24</sup> If these wider benefits are to be realised it is critical that the NPS is clear and robust. The ESA were concerned that any ambiguity could result in longer hearings or a judicial challenge.<sup>25</sup>

18. Much of the evidence we received highlighted areas where the draft NPS is ambiguous or unclear and requires amendment if unnecessary and costly delays in the planning process are to be avoided. We explore these specific issues further below.

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17 Ev 38

18 Q132

19 Q13

20 Ev 42

21 Q132

22 Infrastructure Planning (Fees) Regulations 2010 (SI 2010/106)

23 Q7

24 Draft NPS, Impact Assessment, p16

25 Ev 34

## Thresholds

19. The Planning Act 2008 sets out the thresholds at which proposed hazardous waste infrastructure projects will be classed as NSIPs and come within the NPS regime. Section 30(2) provides that a new development with an annual capacity of over 100,000 tonnes per year for landfill or deep storage and over 30,000 tonnes per year for other infrastructure types will be covered by the NPS. Section 30(4) provides that any alteration to an existing facility which increases capacity by more than 100,000 tonnes for landfill or deep storage, or by more than 30,000 tonnes for other infrastructure types, will also fall within the NPS process.

20. In their written evidence, both the Environmental Services Association (ESA) and the Chartered Institution for Wastes Management (CIWM) drew attention to an ambiguity in the definition of thresholds in relation to existing landfill sites which are above Planning Act thresholds.<sup>26</sup> Some of these sites have a time-limited planning permission which requires renewal if the site is to continue to operate. In other cases, an application may be made for the void space of an existing landfill site to be increased. In both of these examples, the overall capacity of the site would not necessarily increase by 100,000 tonnes per annum and so our witnesses questioned whether such applications would be dealt with under the NPS process.

21. Defra clarified the situation in their written evidence by reference to section 30(4) of the Planning Act 2008:

Where an existing landfill site with a capacity of over 100,000 tonnes per year has a time limited planning permission, an application to renew that permission will fall under the Town and Country Planning regime because there is no increase in capacity. In the case of a void extension for an existing hazardous waste landfill site, applications will fall under the IPC regime where they involve an increase in capacity of more than 100,000 tonnes per annum and under the Town and Country Planning regime where the increase in void space increases capacity by less than 100,000 tonnes per annum.<sup>27</sup>

22. The Environment Agency acknowledged that there was “a possibility of a bit of a legal debate” about this issue and that it was preferable for it to be clear on the face of the NPS.<sup>28</sup>

**23. We recommend that the NPS be amended to make clear that renewals of time-limited planning permission for existing landfill sites will continue to be dealt with under the planning consent regime set out in the Town and Country Planning Act 1990. Similarly, the NPS should make clear that increases in void space will only be dealt with under the NPS process where the capacity of the site would be increased by more than 100,000 tonnes per annum.**

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26 Ev 33, Ev w6

27 Ev 41

28 Q102

## Terminology

24. The IPC’s written evidence expressed concern about the inconsistent and inaccurate language used throughout the draft NPS to describe the relationship between it, applicants, and “consenting bodies” (e.g. the Environment Agency):

The IPC is to “seek advice”, “liaise”, “consult” and “cooperate”. In some cases such a relationship would be in conflict with the [Planning] Act or create tension with or confusion in relation to the IPC’s engagement with such bodies, at legally defined points in the process.<sup>29</sup>

The ESA agreed that the use of inconsistent language could cause problems:

...it will become confusing, because people will assume that it has been phrased differently for a reason. When you have been to a planning inquiry and you are mulling over policy, those are the sorts of things you can spend many hours on, so consistency is very helpful.<sup>30</sup>

Defra told us that they would consider this evidence, noting that “The whole point of the document is to try to be as unambiguous as possible, so we will try to ensure the language reflects that.”<sup>31</sup>

**25. We believe that the inconsistent terminology used in the draft NPS could lead to uncertainty. We recommend that Defra amend the NPS so that the language used to describe the interaction between the IPC, developers and consenting bodies is consistent and accurate throughout the document. A failure to achieve legal standards of drafting in the NPS will increase the likelihood of legal challenge in the planning process, increasing costs and introducing delay.**

## Environmental Permits

26. The operation of hazardous waste facilities is regulated by the Environment Agency through a permitting system. To build and operate a nationally significant hazardous waste facility, developers will need to obtain both development consent from the IPC and an Environmental Permit from the Environment Agency.

27. The draft NPS describes the planning and pollution control systems as “separate but complementary”, explaining that:

The planning system controls the development and use of land in the public interest. It plays a key role in protecting and improving the natural environment, public health and safety, and amenity, for example by attaching requirements to allow developments which would otherwise not be environmentally acceptable to proceed, and preventing harmful development which cannot be made acceptable even through requirements. Pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the releases of substances to the

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29 Ev w1

30 Q37

31 Q150

environment from different sources to the lowest practicable level. It also ensures that ambient air and water quality meet standards that guard against impacts to the environment or human health.<sup>32</sup>

There is considerable overlap between the issues to be considered in the planning and pollution control application processes, and the draft NPS acknowledges that there will need to be close interaction between the IPC and the Environment Agency throughout the application for development consent for NSIPs.<sup>33</sup> Applicants are encouraged to make early contact with the regulator and, where possible, to submit applications for Environmental Permits at the same time as applying to the IPC for development consent.<sup>34</sup>

28. There is concern about the proposed approach to obtaining development consent and Environmental Permits. Witnesses suggested various ways in which the approach could be improved. The Chartered Institution of Water and Environmental Management argued that the two systems were “intimately linked” and should be merged into one process, with developers required to submit just one application which would encompass both permitting and planning permission.<sup>35</sup> This suggestion did not receive a great deal of support, with the ESA describing it as “a nice idea, hard to do in practice”.<sup>36</sup> They felt that the best approach would depend on the circumstances:

To a degree, it depends on what the key issues are relating to development. If pollution control is the absolute key issue, you may want to get that resolved early on.<sup>37</sup>

29. The IPC suggested that applications for Environmental Permits, should, where possible, be made prior to the application for development consent being submitted. The Commission noted that this would allow time for any differences between themselves, the applicants and regulators to be resolved, and would enable regulators to make meaningful representations to the decision-maker.<sup>38</sup> However, there were some concerns about the cost implications of such an approach, with CIWM explaining that “operators may not risk the significant investment necessary to secure an Environmental Permit when there is no certainty that a Development Consent Order will be made.”<sup>39</sup>

**30. It is clear that there are significant concerns about the way that the draft NPS deals with the interaction between applications for Environmental Permits and development consent. We recommend that Defra consider how the two application processes could be streamlined with a view to avoiding unnecessary duplication and bureaucracy, thereby reducing costs for developers. Opportunities for the information provided by**

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32 Draft NPS, p 24, para 4.7.2

33 Ibid, p 25, para 4.7.8

34 Ibid, para 4.7.7

35 Ev 37

36 Q36

37 Q35

38 Ev w1

39 The Chartered Institution of Wastes Management, *Submission to Defra NPS Consultation*, October 2011

**developers to be shared between the IPC and the Environment Agency rather than submitted separately should be exploited.**

## Generic Impacts

31. Part 5 of the draft NPS sets out a list of impacts which Defra believes will be relevant to any application, and provides guidance to the IPC on how each individual impact should be considered, including what mitigation measures may be required if development consent is granted. It also sets out the approach that the applicant should take to assessing these impacts when submitting an application.

## Flooding

32. The NPS states that before granting development consent, the IPC must be satisfied that the proposed development “is appropriately flood resilient and resistant... and that any residual risk can be safely managed over the lifetime of the development.”<sup>40</sup>

33. The approach to flood risk set out in the draft NPS adopts the broad principles of Planning Policy Statement 25 (PPS 25). Areas are categorised into Flood Zones 1, 2, 3a or 3b depending on their risk of flooding.<sup>41</sup> The zone at most risk of flooding is Flood Zone 3b, which is made up of the functional flood plain, and the draft NPS rules out development of hazardous waste NSIPs here (with the exception of ship recycling facilities). Development consent for NSIPs in Flood Zones 2 and 3a may be granted where the IPC is satisfied that the ‘sequential’ and ‘exception’ tests have been correctly applied. These tests are intended to ensure that development takes place in Flood Zones 2 and 3a only where there is no reasonably available alternative site.

34. CIWEM criticised the approach to flooding set out in the draft NPS:

Locating a hazardous waste facility in a flood risk zone, whatever the need, might be considered at best unwise, if not foolish. Instances of flooding of such facilities have occurred in England and are not without potential for significant hazard.<sup>42</sup>

Their view was that development consent should not be granted for proposed NSIPs in Flood Zones 2 and 3:

there is a case for saying that you do not put this large infrastructure in anything else but flood zone one... it is actually a hazard to the local environment and people if it is flooded... It seems to me that it is sufficiently important, particularly when we are

40 Draft NPS, p 44, para 5.7.8

41 Flood Zones are categorised as follows:

Flood Zone 1: land that has less than a 1 in 1,000 chance of flooding in any one year

Flood Zone 2: land from the Flood Zone 1 boundary up to a 1 in 200 chance of flooding in any one year (for tidal flooding) and 1 in 100 chance of flooding in any one year (for river [fluvial] flooding)

Flood Zone 3: land with a greater than one in 200 (tidal) and 1 in 100 (fluvial) risk of flooding in any one year. Land in Flood Zone 3 is further divided into Zone 3a, and Zone 3b, with 3b forming the functional flood plain, which is land needed for the storage or flow of water during regular flood events.

42 Ev 37

ring-fencing this larger group of facilities, that you would say, “No way” anywhere else.<sup>43</sup>

**35. We share the concerns of the Chartered Institution of Water and Environmental Management that the draft NPS does not take sufficient account of the risks that flooding of hazardous waste facilities may pose. We recommend that the NPS be amended to require the IPC to attach greater weight to flood risk considerations. With the exception of ship recycling facilities, hazardous waste infrastructure should be located in Flood Zones 2 and 3 only in the most exceptional and compelling circumstances.**

36. Government is currently consulting on a National Planning Policy Framework which will replace planning policy statements, including PPS 25. The Environment Agency told us that they were satisfied that existing planning policy around flooding was adequately represented in the “new slimmed-down version”<sup>44</sup> and Defra also sought to reassure us that the draft NPPF “remains broadly consistent with current planning policy and with those elements of the NPS dealing with planning policy on the impacts of development”.<sup>45</sup>

37. Whilst the draft NPPF may be “broadly consistent” with current planning policy on flooding, we are concerned by the possibility that a “slimmed-down” version of PPS 25 could increase the risk that Hazardous Waste NSIPs will be inappropriately sited in areas at risk of flooding. We note that the draft NPS states that further guidance (for example on carrying out Flood Risk Assessments and interpreting the term “reasonably available site” for the purposes of the Sequential Test)<sup>46</sup> can be found in the Practice Guide which accompanies PPS 25, or “successor documents” (which we take to refer to the NPPF). There is no guarantee that the NPPF will contain equally detailed and robust guidance as that currently contained in PPS 25. **We recommend that Defra ensure that the consideration of flood risk in the NPS remains as detailed and robust as that currently set out in PPS 25 and its associated guidance, and is not watered down by proposed changes to broader planning policy.**

38. Our concerns about the approach to flooding set out in the draft NPS are compounded by the fact that the IPC can grant development consent even where the Environment Agency objects to a proposed development on the grounds of flood risk.<sup>47</sup> The Environment Agency told us that to their knowledge, where they objected to a planning application on flood risk grounds almost 97% of decisions were taken in line with their advice.<sup>48</sup> Given the risks that the flooding of hazardous waste infrastructure may pose, we do not believe that it is ever acceptable for the IPC to grant development consent for hazardous waste infrastructure where the Environment Agency objects to the development on the grounds of flood risk. **The draft NPS should be amended to direct the IPC to**

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43 Q91

44 Q109

45 Ev 40

46 Draft NPS, p 43, para 5.7.6 and p 45, para 5.7.12 (see footnote)

47 Ibid, p 44, para 5.7.10

48 Q110

**refuse development consent where the Environment Agency advises against a development on flood risk grounds.**

### **Whole-life Costing**

39. In assessing the socio-economic impacts of a proposed development, the NPS requires applicants to conduct “whole-life costing” to ensure that they benefit the local, regional and/or national economy.<sup>49</sup> Defra told us that whole-life costing “is not a new concept”, that it “is used routinely in the business world”, and that they do not believe that it should cause any difficulty to potential developers.<sup>50</sup> This view is contrary to the evidence we received from industry representatives, who expressed concern about the lack of clarity about what whole-life costing would involve. CIWM noted that there was currently no guidance on how it should be carried out,<sup>51</sup> and the ESA said that they were “not really quite sure what the purpose of it is and we are certainly not sure about what is intended to be produced... we would like to understand a lot more about what that actually entails”.<sup>52</sup>

**We recommend that Defra provide clarity to developers by including a definition of whole-life costing in the NPS.**

### **Insect infestation**

40. Among the generic impacts to be considered by the IPC and addressed by developers is the prospect of insect infestation.<sup>53</sup> Industry representatives were perplexed by the inclusion of this impact, with CIWM stating that they were “confused” and commenting that “hazardous wastes do not normally attract insects”.<sup>54</sup> Similarly, the ESA was not aware of insect infestation having previously arisen as an issue in connection with hazardous waste facilities and did not see that it would be a relevant consideration.<sup>55</sup>

41. Defra justified the inclusion of insect infestation as a “belt and braces approach. It is there as it would be for other planning applications”.<sup>56</sup> Asked whether this was consistent with Government’s drive to reduce regulation and bureaucracy, the Minister answered that “The public would want reassurance that these things were being dealt with”.<sup>57</sup>

**42. We recommend that insect infestation be removed from the generic impacts section of the draft NPS. In light of Government’s stated intent to remove the regulatory burden on businesses, it is unsatisfactory that the inclusion of irrelevant impacts in this NPS has been justified as being part of a “belt and braces” approach.**

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49 Draft NPS, p 58, para 5.12.6

50 Ev 41

51 Ev w7

52 Q29

53 Draft NPS, p 41, para 5.6.1

54 Ev w7

55 Q42–43

56 Q183

57 Q186

## Perception

43. The development of hazardous waste infrastructure is, in the words of the draft NPS, “essential for public health and a clean environment”.<sup>58</sup> The Chartered Institution of Wastes Management put it in the following terms:

hazardous wastes arise because many of the goods and services that society demands result in some limited quantities of hazardous waste as a byproduct. If society wants the benefit of these goods and services, including for example modern electronics and most forms of transport, then we need hazardous waste infrastructure.<sup>59</sup>

44. Our witnesses recognised, however, that the public perception of hazardous waste treatment facilities was generally negative. In CIWEM’s view there was “very little overlap between fact and public perception.”<sup>60</sup> The Environmental Services Association described overcoming negative perceptions as essentially the biggest issue for developers,<sup>61</sup> noting that:

it is very difficult to just get across to the public what hazardous waste is. I always use the analogy that most people are quite happy on a Saturday to walk up and down the aisles of B&Q. They are in a DIY warehouse and they are happy, but something like 80% of the paint, glue, garden sprays etc on those shelves in B&Q, if it were to be discarded, would be hazardous waste.<sup>62</sup>

45. The ESA noted that Government had committed to provide a guidance booklet on energy from waste as part of its recent Waste Review<sup>63</sup> and suggested that a similar resource covering hazardous waste could be provided.<sup>64</sup>

46. Our witnesses also discussed the contrasting attitudes to waste disposal facilities in the UK and in other European countries. The ESA suggested that cultural differences and higher levels of community engagement underpinned the more receptive attitudes to waste facilities in Scandinavian countries such as Finland,<sup>65</sup> and CIWEM felt that the UK could learn from other countries who “do this better”.<sup>66</sup> We believe that there are lessons to be learnt from other European countries when it comes to improving public perceptions of waste infrastructure.

47. Lord Taylor agreed that there was a role for Government to better educate the public about the need for hazardous waste facilities:

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58 Draft NPS, p 12, para 3.1

59 Ev w3

60 Q72

61 Q38

62 Q40

63 Defra, *Government Review of Waste Policy in England*, June 2011, para 239

64 Q40

65 Q49–50

66 Q78

It is often about being patient, and building people’s confidence. The fact that we have the words “hazardous waste” on this document makes most people prick up their ears and say “This must be dangerous.” We have to get over that.<sup>67</sup>

48. The draft National Policy Statement endorses the market-led approach to the development of hazardous waste infrastructure which was set out in the 2010 Strategy,<sup>68</sup> and we agree that developers should be responsible for communicating with local communities about the implications of specific proposals. However, we strongly believe that there is also a role for Government to play in educating the wider public about the need for, and health and environmental benefits of, new hazardous waste infrastructure.

**49. Government must play a more proactive role in educating the public about the need for and benefits of new hazardous waste infrastructure. We expect Defra in its response to this report to set out how it will seek to improve public awareness and perceptions of hazardous waste facilities. This could include production of a short factual guide which developers could make available to local communities as part of the consultation process.**

50. Our report on the draft Waste Water NPS, published earlier in this Parliamentary Session,<sup>69</sup> criticised the Department for the low profile which that consultation had received, with just 38 consultation responses submitted. Despite Defra’s assurance that they had taken account of our criticisms,<sup>70</sup> the consultation on the Hazardous Waste NPS in fact received even fewer responses—just 29.

51. We have taken account of Defra’s suggestion that this was because the Hazardous Waste NPS, unlike the Waste Water NPS, did not propose specific projects and was a purely generic document.<sup>71</sup> The low number of responses is nonetheless very disappointing in the light of the concerns expressed in our previous report.

**52. It is very disappointing that despite our criticisms of Defra’s consultation on the draft Waste Water NPS, the consultation on the draft Hazardous Waste NPS has received even fewer responses. This underlines the need for the Department to do far more to engage with the public in this policy area.**

### ***Community stress and anxiety assessments***

53. Industry representatives expressed concern about the requirements which the NPS placed on them to carry out a “community stress and anxiety assessment”.<sup>72</sup> CIWM drew attention to the “paucity of guidance” about how such assessments should be conducted which was likely to lead to “significant dispute” about both the assessment process and the analysis of results.<sup>73</sup> The ESA agreed, telling us that they felt that this part of the NPS was

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67 Q152

68 Draft NPS, p 10, para 2.4.2

69 HC 736

70 Ev 41

71 Ibid

72 Draft NPS, p 26, para 4.10.2

73 CIWM, *Submission to Defra NPS consultation*, October 2011

“almost a throwaway section” and that it was “very unclear exactly what the company is expected to do—what sort of assessment, what sort of ways it could seek to allay anxiety and stress that was seen to be there”.<sup>74</sup>

54. Lord Taylor told us that:

there are two schools of thought... [one] that says you should lay everything down, so that everybody knows and can start at the beginning and come out at the end. On the other hand, there is a recognition that circumstances are different, locations are different, and perhaps the process is best left to the judgement of the individual applicant and the community.<sup>75</sup>

This appears to be at odds with his comment earlier in the evidence session that “the whole point of the document is to try to be as unambiguous as possible”.<sup>76</sup>

55. We recognise that it may be desirable for there to be a degree of flexibility about how stress and anxiety assessments are conducted, depending on the circumstances of the application. This does not obviate the need for clarity about the purpose and expected outcome of such an assessment. Despite Defra’s assurances, it is clear that developers face an unacceptable degree of uncertainty in interpreting how stress and anxiety assessments should be undertaken. **We recommend that the draft NPS be amended to include guidance on how community stress and anxiety assessments should be carried out.**

## National Policy Statements and Localism

56. The Planning Act 2008 provides that developers must consult local communities before submitting an application for the IPC.<sup>77</sup> The responses to that consultation should be taken into account by the developer when submitting the application for development consent to the IPC.<sup>78</sup> The IPC must satisfy itself that the consultation has been properly carried out<sup>79</sup> and local communities will also be able to make representations directly to the IPC once the application has been submitted.

57. The Localism Act 2011 has highlighted what has always been an inherent tension between the national need for major infrastructure and the interests of local communities who would be affected by such developments. Despite Lord Taylor’s assurance that developers would have to take account of local sentiment,<sup>80</sup> and his expressed hope that the consultation process would be based on “reason, argument and persuasion”,<sup>81</sup> the fact remains that approval of nationally significant hazardous waste infrastructure projects could be granted in the face of local opposition. Whilst this may be unavoidable if the

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74 Q38

75 Q156

76 Q150

77 Planning Act 2008, section 47

78 Ibid, section 49

79 Ibid, section 55

80 Q187

81 Q194

national interest in the development of new infrastructure is to be met, we believe that every effort must be made to provide local communities with the opportunity to influence the design and construction of the proposed development in order to minimise the impacts on them.

58. The Department for Communities and Local Government has published guidance on the pre-application consultation which should be carried out by developers submitting applications for development consent to the IPC.<sup>82</sup> This guidance is presented as a “toolkit” rather than specifying a particular approach to consultation, although one of the stated principles of the process is to enable potential mitigating measures to be considered<sup>83</sup> and the guidance notes that local communities may be particularly well-placed to comment on what mitigating measures might be appropriate.<sup>84</sup> **We recommend that Government amend the guidance to developers on conducting pre-application consultations so that developers are required to invite local communities to propose specific mitigation measures.**

59. The IPC has produced an advice note, *How to have your say on a major infrastructure proposal—the developer’s consultation*, which explains how affected individuals and communities can contribute to the pre-application consultation. It does not make specific reference to mitigating measures.<sup>85</sup> **The IPC’s *How to have your say* advice note should also be amended to encourage local people to suggest how the impacts of a development may be mitigated.**

## Section 35 of the Planning Act 2008

60. The centralised approach to decision-making on applications for NSIPs is justified by the national interest in developing new infrastructure, with the thresholds at which hazardous waste infrastructure is considered to be nationally significant set out in Section 30 of the Planning Act 2008.<sup>86</sup> We note, however, that Section 35 of the Act provides that the Secretary of State may direct that a proposed development which does not reach Planning Act thresholds be considered under the major infrastructure regime, where she believes that the proposed development is of national significance. Although reasons must be given, Defra told us that there is no formal guidance on the factors that the Secretary of State should take into account in making this decision.<sup>87</sup>

61. In the absence of published guidance there may be a lack of transparency about the circumstances in which the Secretary of State may direct that an application for an NSIP (whether for hazardous waste or for another type of infrastructure covered by the Planning Act 2008) be considered under the major infrastructure regime under Section 35 of the Planning Act. **We recommend that Defra develop guidance about the factors which the**

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82 Department for Communities and Local Government, *Planning Act 2008: Guidance on pre-application consultation*, September 2009

83 *Ibid*, p 6, para 8

84 *Ibid*, p 10, para 29

85 Infrastructure Planning Commission, February 2011

86 See para 19 above

87 Ev 41

**Secretary of State should take into account in deciding whether to exercise the power set out in Section 35 of the Planning Act 2008 in the context of Hazardous Waste infrastructure. Such guidance should be published alongside the final NPS.**

### **Ministerial responsibility**

62. The Localism Act 2011 contains provisions to abolish the Infrastructure Planning Commission and replace it with a Major Infrastructure Planning Unit (MIPU), to sit within the Department for Communities and Local Government (CLG). The final decision on whether to grant development consent will be taken by the Secretary of State for Communities and Local Government.<sup>88</sup>

63. We considered whether it was appropriate for responsibility for decision-making on hazardous waste NSIPs to rest with CLG, given that hazardous waste is a Defra policy responsibility. We noted that decisions on waste water NSIPs are to be taken jointly by CLG and Defra, and decisions relating to NSIPs for transport and energy will be taken by the Secretary of State for Transport and Energy and Climate Change respectively.<sup>89</sup>

64. Given that Defra has policy responsibility for hazardous waste and has developed the National Policy Statement, we believe that Defra should play an equal role in the decision-making process with CLG. **We recommend that decisions on hazardous waste NSIPs be made jointly by the Secretary of State for Communities and Local Government and the Secretary of State for Defra.**

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88 Department for Communities and Local Government, *Major infrastructure planning reform: work plan*, December 2010

89 Ibid

## 3 Conclusions

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65. The draft NPS requires further amendment before it is designated. The draft contains ambiguities and inconsistencies which could lead to uncertainty for developers and decision-makers and which must be corrected. The sections on Environmental Permitting and flooding are also unsatisfactory. We expect Defra to amend the draft NPS in line with our recommendations before laying it before Parliament for approval.

66. Our inquiry has highlighted the low levels of public awareness about the need for new hazardous waste infrastructure, and the negative perceptions of such facilities. Government has an important role to play in educating the public about the need for, and benefits of, hazardous waste infrastructure and we urge Defra to take a more proactive approach to this.

67. We recommend that the draft NPS be designated, subject to the recommendations contained in this report.

## Conclusions and recommendations

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1. The NPS should be amended so that it is clear on the face of the document what evidence has been used to underpin the assessment of need, particularly in relation to capacity. We welcome the Minister's reassurance that data collection will be an ongoing process and we recommend that Defra review its most recent assessment of installed and planned capacity before the NPS is first reviewed. (Paragraph 15)
2. We recommend that the NPS be amended to make clear that renewals of time-limited planning permission for existing landfill sites will continue to be dealt with under the planning consent regime set out in the Town and Country Planning Act 1990. Similarly, the NPS should make clear that increases in void space will only be dealt with under the NPS process where the capacity of the site would be increased by more than 100,000 tonnes per annum. (Paragraph 23)
3. We believe that the inconsistent terminology used in the draft NPS could lead to uncertainty. We recommend that Defra amend the NPS so that the language used to describe the interaction between the IPC, developers and consenting bodies is consistent and accurate throughout the document. A failure to achieve legal standards of drafting in the NPS will increase the likelihood of legal challenge in the planning process, increasing costs and introducing delay. (Paragraph 25)
4. It is clear that there are significant concerns about the way that the draft NPS deals with the interaction between applications for Environmental Permits and development consent. We recommend that Defra consider how the two application processes could be streamlined with a view to avoiding unnecessary duplication and bureaucracy, thereby reducing costs for developers. Opportunities for the information provided by developers to be shared between the IPC and the Environment Agency rather than submitted separately should be exploited. (Paragraph 30)
5. We share the concerns of the Chartered Institution of Water and Environmental Management that the draft NPS does not take sufficient account of the risks that flooding of hazardous waste facilities may pose. We recommend that the NPS be amended to require the IPC to attach greater weight to flood risk considerations. With the exception of ship recycling facilities, hazardous waste infrastructure should be located in Flood Zones 2 and 3 only in the most exceptional and compelling circumstances. (Paragraph 35)
6. We recommend that Defra ensure that the consideration of flood risk in the NPS remains as detailed and robust as that currently set out in PPS 25 and its associated guidance, and is not watered down by proposed changes to broader planning policy. (Paragraph 37)
7. The draft NPS should be amended to direct the IPC to refuse development consent where the Environment Agency advises against a development on flood risk grounds. (Paragraph 38)

8. We recommend that Defra provide clarity to developers by including a definition of whole-life costing in the NPS. (Paragraph 39)
9. We recommend that insect infestation be removed from the generic impacts section of the draft NPS. In light of Government's stated intent to remove the regulatory burden on businesses, it is unsatisfactory that the inclusion of irrelevant impacts in this NPS has been justified as being part of a "belt and braces" approach. (Paragraph 42)
10. Government must play a more proactive role in educating the public about the need for and benefits of new hazardous waste infrastructure. We expect Defra in its response to this report to set out how it will seek to improve public awareness and perceptions of hazardous waste facilities. This could include production of a short factual guide which developers could make available to local communities as part of the consultation process. (Paragraph 49)
11. It is very disappointing that despite our criticisms of Defra's consultation on the draft Waste Water NPS, the consultation on the draft Hazardous Waste NPS has received even fewer responses. This underlines the need for the Department to do far more to engage with the public in this policy area. (Paragraph 52)
12. We recommend that the draft NPS be amended to include guidance on how community stress and anxiety assessments should be carried out. (Paragraph 55)
13. We recommend that Government amend the guidance to developers on conducting pre-application consultations so that developers are required to invite local communities to propose specific mitigation measures. (Paragraph 58)
14. The IPC's *How to have your say* advice note should also be amended to encourage local people to suggest how the impacts of a development may be mitigated. (Paragraph 59)
15. We recommend that Defra develop guidance about the factors which the Secretary of State should take into account in deciding whether to exercise the power set out in Section 35 of the Planning Act 2008 in the context of Hazardous Waste infrastructure. Such guidance should be published alongside the final NPS. (Paragraph 61)
16. We recommend that decisions on hazardous waste NSIPs be made jointly by the Secretary of State for Communities and Local Government and the Secretary of State for Defra. (Paragraph 64)

## Formal Minutes

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**Tuesday 6 December 2011**

Members present:

Miss Anne McIntosh, in the Chair

Thomas Docherty  
Mrs Mary Glendon

Neil Parish

Draft Report (*The Draft National Policy Statement for Hazardous Waste*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 67 read and agreed to.

*Resolved*, That the Report be the Eleventh Report of the Committee to the House.

*Ordered*, That the Chair do make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No.134.

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[Adjourned till Wednesday 7 December at 2.30 pm

## Witnesses

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### Wednesday 7 September 2011

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**Matthew Farrow**, Director of Policy, Environmental Services Association, **Gill Weeks**, Regulatory Affairs Director, Veolia Environmental Services (UK) plc, and **Dr Gene Wilson**, Group Technical Director, Auegan plc Ev 1

### Wednesday 14 September 2011

**Jan Gronow**, ViceChair, Waste Management Technical Panel, Chartered Institution of Water and Environmental Management Ev 13

**Ed Mitchell**, Director of Environment and Business, **Andrew Coleman**, Senior Environment and Business Advisor (Planning), and **Gill Ross-Jones**, Senior Environment and Business Advisor (Waste and Illegals), the Environment Agency Ev 16

### Tuesday 11 October 2011

**Lord Taylor of Holbeach**, CBE, Parliamentary Under Secretary of State, **Sabine Mosner**, Deputy Director Waste Strategy and Regulation, **Andy Howarth**, Head of Hazardous and International Waste, and **Alison Gadsby**, Senior Hazardous Waste Policy Adviser, Department for Environment, Food and Rural Affairs (Defra) Ev 23

## List of printed written evidence

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1	Environmental Services Association (ESA)	Ev 33:Ev 34
2	Chartered Institution of Water and Environmental Management (CIWEM)	Ev 36
3	Environment Agency	Ev 37
4	Department for Environment, Food and Rural Affairs (Defra)	Ev 39:Ev 40:Ev 41:Ev 42

## List of additional written evidence

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(published in Volume II on the Committee's website [www.parliament.uk/efracom](http://www.parliament.uk/efracom))

1	Infrastructure Planning Commission (IPC)	Ev w1
2	Whitemoss Landfill Limited	Ev w2
3	Chartered Institution of Wastes Management (CIWM)	Ev w3

## List of Reports from the Committee during the current Parliament

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2010–12

First Report	Future Flood and Water Management Legislation	HC 522 (HC 922)
Second Report	The Marine Policy Statement	HC 635
	The Marine Policy Statement: Government response to the Committee's Second Report published as an Un-numbered Act Paper on 17 March 2011	
Third Report	Farming in the Uplands	HC 556 (HC 953)
Fourth Report	The draft National Policy statement (NPS) on Waste Water	HC 736
Fifth Report	The Common Agricultural Policy after 2013	HC 671 (HC 1356)
Sixth Report	Implementation of the Common Fisheries Policy: Domestic Fisheries Management	HC 858 (HC 1485)
Seventh Report	Pre-appointment hearing: Chair of Gangmasters Licensing Authority	HC 1400-I & -II
Eighth Report	EU proposals for the dairy sector and the future of the dairy industry	HC 952 (HC 1548)
Ninth Report	The Welfare of Laying Hens Directive—Implications for the egg industry	HC 830 (HC 1664)
Tenth Report	The outcome of the independent Farming Regulation Task Force	HC 1266 (HC 1669)
First Special Report	The National Forest: Government response to the Committee's Fourth Report of Session 2009–10	HC 400
Second Special Report	Dairy Farmers of Britain: Government response to the Committee's Fifth Report of Session 2009–10	HC 401

# Oral evidence

## Taken before the Environment, Food and Rural Affairs Committee on Wednesday 7 September 2011

Members present:

Miss Anne McIntosh (Chair)

Richard Drax  
Mrs Mary Glendon

Neil Parish  
Dan Rogerson

### Examination of Witnesses

*Witnesses:* **Matthew Farrow**, Director of Policy, Environmental Services Association (ESA), **Gill Weeks**, Regulatory Affairs Director, Veolia Environmental Services (UK) plc, and **Dr Gene Wilson**, Group Technical Director, Auegan plc, gave evidence.

**Q1 Chair:** May I welcome you very much indeed? Thank you very much for being with us. This is our first evidence session on the Hazardous Waste National Policy Statement inquiry. We are required to look into this as the Select Committee responsible under the Planning Act. We are delighted that you are with us to participate and we thank you in advance. Perhaps, you could introduce yourselves, from left to right, for the record.

**Gill Weeks:** My name is Gill Weeks. I am Regulatory Affairs Director for Veolia Environmental Services. I have been with Veolia and its predecessor, Cleanaway, for 25 years; I was a member of the Hazardous Waste Forum when they were drawing up their action plan in 2003; I chaired the Treatment and Capacity sub-group for the Hazardous Waste Forum. Currently I'm on the Defra Hazardous Waste Steering Group and Chair of the ESA Hazardous Waste Committee.

**Matthew Farrow:** Good afternoon. I cannot quite match that I am afraid. Matthew Farrow, Director of Policy at the Environmental Services Association, which is the trade association for the waste management sector, so many of the firms which deal with and treat hazardous waste are members of ESA.

**Dr Wilson:** My name is Dr Gene Wilson. I'm Group Technical Director of Auegan plc. We are a specialist hazardous waste management company working throughout the UK. My expertise is in planning and, obviously, hazardous waste. I am responsible for environmental permitting and planning issues in my business. I have a background, prior to Auegan, of being in consultancy, running a planning and permitting team in that consultancy, over 18 years, on waste treatment.

**Q2 Chair:** From where you sit, what difference do you think the National Policy Statement will make?

**Matthew Farrow:** Perhaps I can kick off, Madam Chairman. Broadly, we are supportive of the National Policy Statement. We support the Government's hazardous waste management strategy and we agree with the assessment in the NPS, in broad terms, of the need for new facilities. Given that these are significant economic commitments for companies to make, it is important to them that they have some confidence in the IPC process and its successor process. Overall, we feel that the NPS sets out the need appropriately. We

have some caveats around the detail, which I will come to, but we think it will give some confidence to companies considering investing in this market.

The one additional point I would make at the outset is that, while the strategy itself and the NPS say all the right things in terms of saying that, as a country, we want to see hazardous waste dealt with in the best possible way—and we expect the industry to come forward with those proposals—from the industry's point of view, the one concern they have is whether the enforcement of the new regulations around hazardous waste will be sufficiently strong to make sure that top-end, high-quality facilities, which ESA members might want to build, are going to earn a return on investment. We have some concerns that, if enforcement is not strong enough, sub-optimal treatment will stay in the market for a long time. I am happy to return to that issue if the Committee wishes.

**Q3 Chair:** Do you envisage any difficulties with the fact that the policy is being set by one Department, Defra, but the planning is being implemented by another, Communities and Local Government?

**Dr Wilson:** I wouldn't think so, because these are not new policies; they are drawn from the existing policy framework, through the PPSs and the other policies that have been in place for a long time. One of the exercises that we did when we examined the NPS was to look at how it fitted with current policy. Certainly, on all the environmental assessment parts and from my knowledge of PPS10, which is the main waste policy, it is consistent with that, so I do not see a problem with the fact that it has been derived from Defra as opposed to DCLG.

**Q4 Chair:** In your written evidence, you largely welcome the introduction of an NPS, and you refer to long delays in obtaining planning permission as being a significant barrier to delivering new waste management infrastructure. Are you able to give us any specific examples of applications for such facilities, which have suffered from what you would deem to be unreasonably long delays?

**Matthew Farrow:** In terms of hazardous waste specifically, I do not know if my colleagues, Gene or Gill, can give an example.

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**Dr Wilson:** There has always been an issue with planning and potential delay. Some applications go through efficiently, but others can be subject to extensive delays, in the appeal system in particular. Once an application has to go through the appeal system, it can be at least 12 months before a decision is made and that, given the investment that is being made in the process and the fact that you are not able to implement that facility in the timescale, affects the ability to deliver high standards of hazardous waste treatment and management.

**Gill Weeks:** One of the reasons we did not jump in with a specific example is because there has not actually been any major hazardous waste infrastructure built for a number of years, because we have been waiting for the strategy and everything to drive it forwards. While there have been some smaller developments, there has not actually been any major piece of kit built in the UK for some time.

**Q5 Chair:** If any did spring to mind, you would be very welcome to write to us with specific examples. Just looking at the fact that probably many have waited until the new regime is in place, would you say it is looking at appropriate locations, more in an industrial area rather than a residential area, and also getting in at the ground level with, say, parish councils at the earliest possible stage? Do you believe that that helps facilitate planning and commissioning?

**Matthew Farrow:** In terms of the developers making those approaches, yes. We obviously believe that it is in the developer's interest to be as open as they can be about the applications they are making. Again, if colleagues have any examples, they might want to refer to the sort of things we do.

**Gill Weeks:** My company built a hazardous waste incinerator in the North West quite a few years ago. There was extensive liaison with the local community about the siting of the facility, and we set up a liaison group at the very beginning, before the actual building works were carried out. We found that very, very useful. What is set out in the NPS, largely, we would all agree with in terms of consultation. I know Gene has some particular concerns in some areas to do with perception, which I am sure he will pick up on, but generally where they would be sited would be appropriate to the type of facility you would be building.

**Dr Wilson:** I think, certainly within those companies that have been in the sector for some time, there is a mature attitude towards selection of location. There is an understanding that some locations are going to be less suitable than others. We are very careful about where we choose to put our sites. Notwithstanding that, it is also extremely important and a standard part of the sector's approach to new applications to undertake extensive consultation with the communities, the parish councils and so on. That is an ongoing process. Really, the majority of the major companies are already doing what is set out in the NPS in terms of consultation.

**Q6 Chair:** Just reverting to the answer you gave that not many major facilities have been put forward for planning permission, is there a possibility that

developers will submit applications for larger facilities than they might otherwise have done, under the thresholds for nationally significant infrastructure projects, just to bring their applications within the provisions of the Planning Act and benefit from the more streamlined planning application process under the NPS?

**Gill Weeks:** I think Gene will probably supplement my answer to this, but really only two groups are caught under the Hazardous Waste NPS. They are the 100,000-tonne-a-year for hazardous waste landfill or deep storage, and 30,000-tonne for other treatment facilities. Now, that 30,000-tonne threshold I know is in the Act, but it is quite a low threshold that could catch a number of facilities, in particular something like a soil treatment plant. Would people go above or below? It would depend on the facility but, yes, I could see some people saying, 'We will try to creep under, rather than go for a bigger facility.' Although this is more streamlined, there is an awful lot of work upfront with this type of application. You have to do all your consultations. Again, I think Gene will supplement this, but you have to do a lot of consultation, a lot of work, a lot of environmental assessment before you actually submit the application, so that might put people off if they think they can get it through local planning, if it is not too contentious.

**Dr Wilson:** I would agree with Gill, particularly when you get to the sub-50,000-a-year facilities. Operators would be very tempted to seek to put those facilities out of the IPC system. The IPC system is costly; it is not cheaper than going straight through the Town and Country Planning system, particularly if you do not have to go to appeal. The IPC system guarantees, essentially, that you go through some inquiry process, essentially a hearing process, which is always expensive. There are costs put out in one of the annexes of the NPS document. Those costs essentially relate to the fees. They do not relate to the costs to the applicant in terms of preparing for that process, and those costs are quite substantial.

**Q7 Chair:** It is difficult without breaching confidentiality—are you able to say what the average costs would be of even preparing that?

**Dr Wilson:** I can say that the overall costs for, say, a relatively small facility such as a soil washing plant are potentially between about 6 and 16 times more than getting a straight decision from a planning authority. That assumes you do not have to go to appeal. Once you go to appeal, the costs will probably be similar. Clearly, if you have a good chance of getting an application through a planning authority, you would prefer to do that, given that the costs are very substantially different. If you took a soil treatment plant, which is a low-cost low-value plant, it actually could cost about 46% to 100% of the cost of the plant to get the permissions in place, once you have gone through all the process and got your permits as well. This is a really significant element for perhaps small to medium enterprises that are investing in this sector.

**Q8 Chair:** That is helpful. Are you concerned that the NPS, we understand, will apply only to England?

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7 September 2011 Matthew Farrow, Gill Weeks and Dr Gene Wilson

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Is that correct? It will not apply to the devolved Administrations. Is there a danger that developers will either gravitate towards sites in England or towards sites in the devolved Administrations, resulting in a disproportionate number either side of an arbitrary border? Have you formed a view on that?

**Matthew Farrow:** Again, I ask colleagues to come in on that. Clearly the legal situation is that the NPS applies to England. I think we see the market as a UK one, and again I might touch on self-sufficiency as a country at a later point. Whether there would be any arbitrary effect on borders—

**Gill Weeks:** I do not think so. Generally speaking, most of the facilities where hazardous waste arises tend to be in England and most of the current hazardous waste facilities are in England, so I do not think that is going to make any difference.

**Matthew Farrow:** I would have thought that the economics of the site would probably be the key factor, as opposed to which side of the divide it falls.

**Q9 Dan Rogerson:** Good afternoon to you all. In the evidence from ESA, you raise this issue about existing facilities that are looking for an extension on their lifetime. Do you think it would be preferable for facilities that are above the threshold, where permissions and impairments were granted under the previous regime, now to be covered by this NPS?

**Matthew Farrow:** By the new system. I think we have a concern about that, don't we, that it might be disproportionate in terms of extension of the existing facility?

**Dr Wilson:** The extension relating to a treatment facility would be based on capacity. Again, the same comments apply as those made on initial capacity for treatment facilities. On landfills, we feel it is odd that the implication is that you would have to increase the capacity—how much waste comes in through the gate—before it came under the IPC, whereas a void extension, is probably far more contentious and of far greater significance to provision of the national requirements for hazardous disposal, and is potentially not caught. We think that actually the Planning Act is ambiguous in the way that it is set out and what the NPS could do is perhaps give some clarification to exactly what is meant. It is ESA's view that it should apply to void extensions. It obviously does not say that in the regulations, so that cannot be changed at this time, but that is the position.

**Q10 Dan Rogerson:** The second issue around definitions and the sort of thing that you were discussing there is about whether the threshold is triggered by the amount of waste that is handled at the site or the hazardous part of that waste. The Chartered Institution of Water and Environmental Management (CIWEM) raised the extreme example of a steel ship—a very weighty item—and the fact that a small percentage of its overall mass would be hazardous waste. What is your response to those kinds of questions? What is your view on that?

**Gill Weeks:** That was an extreme example but it does happen. The policy just needs to be clear. We do not want to have debates and people in a position where they do not know where they fit. We have always

asked for clarity in legislation and guidance. If it is the intention that decommissioning oil rigs, ships or whatever should be in IPC, then that should be clear. I do not have a particular view about whether it should or should not be in; I just think it needs to be absolutely clear, otherwise we are just going to be arguing with local authorities about whether it comes to them or goes to the IPC. It just wastes time.

**Q11 Dan Rogerson:** Just picking up on something you were saying earlier on about SMEs. In my constituency there is a family company that has taken on a lot of construction waste, which would have gone to landfill years ago, and they are now recycling it. From what you were saying there, you think there may be big problems for them if their business expands the tonnage that they cover. If they extend the footprint of their organisation, that might bring them within these sorts of provisions. Is that something that is of concern to you, where larger bodies cooperate perhaps with SMEs to do particular specialist work? Can you foresee that being a problem?

**Dr Wilson:** I am not entirely clear about the question.

**Gill Weeks:** If it is a construction company, then a large part of what they are handling will be non-hazardous. What they might need to do is just really look at how their site is permitted. They should talk to the Environment Agency. It is probably simply a case of better segregating their waste, so that they have a small amount of hazardous waste and the rest of their material is non-hazardous, and the permit reflects that. Something like a construction company would be unlikely to go over the threshold, unless they were going into soil treatment.

**Q12 Dan Rogerson:** I was thinking more of the companies that handle and recycle stuff from construction sites, rather than construction companies themselves, and whether this would make life harder, as we often hear it does for smaller companies, than it would for bigger organisations that have teams of people who are able to propose multiple facilities around the country, and therefore have specialist teams to do it. Is that an issue for them?

**Dr Wilson:** For those companies, this will not make it worse than it already is. They would get the expertise from consultancies and so on. Where we would be concerned is whether the costs are proportionate to the facility.

**Q13 Neil Parish:** Good afternoon. Do you agree with Defra's assessment of the need for specific types of national significant hazardous waste infrastructure? At the moment, they have waste electrical, oil regeneration, treatment plant for air pollution, thermal desorption, bioremediation, which is soil washing, and ship recycling. Do you agree with those and do you think there are some types of waste that have not been included in the NPS?

**Matthew Farrow:** Broadly, yes, we think the assessment of need is broadly appropriate. Some of the data—I think we mention this in our submission—are a couple of years out of date. It would be prudent, I would have thought, that they continue to review

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the latest data. There is always the potential for new technologies to come along. Obviously, part of our role as the industry is to be innovative. We do not want anything that would stifle that innovation. In broad terms, we do think it is about right, but I do not know, Gill, if you want to add anything?

**Gill Weeks:** I think you have pretty much covered it there, but things will always come along that we have not thought about, or that were not thought about at the time when the NPS was coming along. One of the issues raised in the Chartered Institution of Wastes Management (CIWM) evidence talked about the need to look at lithium batteries. When these hybrid cars that have just gone on the road, and hybrid vehicles, start to come to the end of their lives and are being dismantled, we need facilities to deal with those very large, heavy lithium batteries. Whether it will go over the threshold of 30,000 tonnes, I perhaps doubt, but those are the kinds of facilities that might come.

Also, the statement of need, as Matthew said, is based on the data that we produced earlier. We need to look at that again and we also perhaps need to revisit the work that was done for the Hazardous Waste Forum on the Treatment and Capacity sub-group, so that we have very up-to-date information on both what has actually been built in the interim years and what is in the planning stage, so that we know what is coming on line. One of the problems is that the hazardous waste market is quite diverse. Several companies are involved and obviously there are commercial considerations, so what is coming on line is not always broadcast. We need to get a feel for that across the country.

**Matthew Farrow:** If I might add to that, one of the reasons why it is important to keep reviewing the data is that the overall balance of the economy and economic health has an impact here. We have a Government that is talking about rebalancing the economy and trying to promote manufacturing process industries. We feel, and certainly hear from our clients in those industries, that it is important to them in thinking about the UK as an investment location that there is a strong, modern, appropriate hazardous waste network able to deal with the waste that they produce. There is an issue here: as the economy goes forward, hopefully we will see a renaissance of the process industries and manufacturing. It is important that our industry is enabled and has the right framework to meet the needs of those companies.

**Q14 Neil Parish:** Linked to that, but slightly going back to Dan Rogerson's questioning, is that the NPS talks an awful lot about tonnage of waste. Surely it depends on the concentration of the amount of hazardous waste within that tonnage. Surely you could still have a nationally significant amount that was much smaller, but of very concentrated waste. Does it cover that enough, do you think?

**Gill Weeks:** One of the things that perhaps we should have said from the outset, which I am sure you have picked up from the papers, is that this is quite a different NPS from most of the others that you are looking at. If you are going to build an airport, put a new rail line in, underground gas storage or whatever,

hazardous waste is not a single thing; it is a lot of different things, as you have just signalled. It could be a small amount of something very, very hazardous or a large amount of something not very hazardous, and all things in between. It can be solid; it can be liquid; it can be gas; it can be a mixture. That is why I think this NPS has to be a little bit more generic than perhaps some of the others.

Hazardous waste in itself has a legal definition, and it is not defined by how hazardous it is. It either is hazardous or it is not. You could have a tonne of soil, which has very low levels of, say, lead or zinc or something in it, which would mean that it was hazardous because that level of contamination was above a threshold. Then you might have a jar of arsenic or something, which would also be hazardous. It does not take account of the difference because the hazardous waste legislation does not take account of that. It either is or is not hazardous, and that really is a matter of fact between the producer and the Environment Agency if there is a dispute.

**Q15 Chair:** Can I just ask, when the list of hazardous waste is amended, what is the lead time for the industry to adapt to the change?

**Gill Weeks:** When the hazardous waste list is changed, there are usually two years, something like that, I think it is. It would be a couple of years.

**Chair:** That allows you, as an industry, enough time.

**Gill Weeks:** You have a little bit more notice, because you see it being debated in Europe, so you see the proposals for change going to the Technical Adaptation Committee in Brussels, so you see, "Oh, they're looking to drop the level on zinc," and then you run round and say, "Is that going to affect the types of waste we handle or not?" Then it goes through quite a lengthy debate in Brussels, before it actually comes through, and then it has to be brought into the UK legislation. Although I might say it is a couple of years from when the legislation is formed in the UK, you have actually seen it coming some time previous to that. So, yes, you have time.

**Dr Wilson:** The sector is very closely aligned and obviously very much driven by regulation, so it keeps a very strong eye on what is actually happening and how things are changing. It also works very closely with the Environment Agency, so the Environment Agency would consult us about how easy it would be to implement changes. That may have an effect when it is implemented, but it also affects how they approach the issue in the, say, first 12 months. They would take a lighter approach initially while we are adapting to a change. It is a well-worked system in terms of changing and adapting to regulatory change.

**Q16 Neil Parish:** Do you agree that there is a need for hazardous waste landfill to be included in the NPS, despite the fact that Defra's hazardous waste strategy stated existing landfill facilities appear to be adequate?

**Matthew Farrow:** In terms of new facilities?

**Neil Parish:** Yes. Are they particularly desirable?

**Matthew Farrow:** I think the options need to be kept open because things are hard to predict. Two points, I suppose: the first is the NPS rightly says this should be a market-led system. As Gill was saying, it is a

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very varied, complex market, and it is difficult to predict future needs precisely. The other point worth making is that, while we are all very familiar these days with the waste hierarchy—and I think quite rightly, for the more general waste stream, household waste streams—all of us in the industry, yourselves as politicians, householders, want to see everything as high up the hierarchy as possible. While that remains true for hazardous waste, the public also expects us as an industry to deal with it completely safely. There are some hazardous wastes, again colleagues can give you examples, no doubt, where safe disposal and destruction of the hazardous material is the best environmental option. While, where we can as an industry, we will look for ways to recover some value or some material and push it up the hierarchy, hazardous waste has to be thought about slightly differently. The absolute priority must be safe disposal, where that is the right course. I do not know if colleagues want to add anything.

**Dr Wilson:** I want to add something. There is no doubt that there will be an ongoing need for hazardous landfill. Yes, as we stand, there is probably sufficient capacity, but what the NPS also mentions is, of course, that some of those planning permissions will run out with time. Unlike a treatment facility where, once you have a permission, it is there forever, landfill is always a temporary use. All landfill permissions will have a maximum life of probably 15 years. We have only eight hazardous landfill sites that accept a wide range of wastes. There are a number of others, but those are the key sites, and I would say at least five of those will probably run out of time, in terms of their planning permission, in the next five years. We would expect them all to seek an extension of time or a need for a replacement site. While the rate at which waste going into hazardous landfill might slow down, for the foreseeable future there will be a need to continue to put waste in.

**Q17 Neil Parish:** The Government's strategy on general waste is to put a higher and higher tax on landfill. We are talking about £80, I think, by 2015, per tonne, on landfill. Wouldn't the argument go that the more difficult you make it to get landfill hazardous waste sites, the more you drive the industry to recycle more of that hazardous waste? That is what worries me if we make it too easy to go for a landfill hazardous waste site.

**Gill Weeks:** I understand the logic there but, as we have just said, there are certain waste streams for which hazardous landfill is the best environmental option.

**Q18 Neil Parish:** Can I just press you on that point? Is it the best option or is it the cheapest option?

**Gill Weeks:** No, it is the best environmental option. The classic example is asbestos. There is very little you can do with waste asbestos. It is particularly hazardous, as everybody knows; it needs to be dealt with properly. You can solidify it. You can vitrify it and put it in glass, which is very expensive, but the best solution is to put it in landfill. Again, high-temperature incineration is regarded as disposal, but there are certain chemical wastes that are

produced by the pharmaceutical sector that have to be destroyed. It is no good looking at recovery. One of the waste streams that my company handles is a by-product of Teflon, the non-stick element of your frying pans, but the material itself is very hazardous and has to be destroyed for the environmental benefits. That is a very important point; we are looking at environmental benefit. Yes, landfill is the last resort, but it is the only resort for a limited range of materials. Then all treatment plants produce some residue at the end, which has to be disposed of. So, even for non-hazardous waste, we will always need landfill for a fraction of it, and the same with hazardous waste.

**Q19 Neil Parish:** You pay the tax, do you, as well?

**Gill Weeks:** On the landfill, yes absolutely. It's the same.

**Neil Parish:** The same rate?

**Gill Weeks:** Yes.

**Q20 Chair:** In terms of the landfill facility being renewed, will the renewal be under the old rule, because it will not breach if there is no change?

**Dr Wilson:** As the legislation is drafted, it suggests that the renewal would fall outside of the IPC regime.

**Q21 Mrs Glendon:** Just moving on from that and talking about the landfill sites, Defra actually states in the NPS that operators may not decide to seek renewal of planning permission for existing hazardous waste landfill sites. Do you think this is likely?

**Dr Wilson:** It is very possible, because it would be dependent on the constraints of the site. Some may be entirely limited by land ownership or geological circumstances. Ultimately, there will be a limit on how much you can extend a site. At some point, the operator will have to say, "I can't renew here. We need a new site."

**Q22 Mrs Glendon:** If there was a possibility, do you think there would be renewals of existing sites?

**Dr Wilson:** It is generally easier to get an extension of permission than it is to get a new site. Operators will generally go for a renewal rather than a brand new site.

**Q23 Mrs Glendon:** Thank you. I want to ask about lithium batteries, because the Chartered Institution of Waste Management has suggested that there will be a need for an Nationally Significant Infrastructure Projects (NSIP) facility for recycling lithium batteries, which could come about in seven to eight years, because of the increase in hybrid cars—the increasing popularity of these cars. Do you agree with this assessment that that will happen in the next seven to eight years?

**Matthew Farrow:** I think Gill touched on this before. We think it is a reasonable point to make. It is very hard to predict absolute numbers and so on, but clearly there is this big movement towards electric vehicles, if you look at the Committee on Climate Change work around climate change mitigation and the focus on that sort of technology. We think it is a reasonable point to make.

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**Gill Weeks:** Whether it will come under IPC or not will depend—if hybrid cars reach a level such that more than 30,000 tonnes are being scrapped every year, then yes, it would be realistic.

**Q24 Mrs Glindon:** Specific sites would be developed as such to deal with them?

**Gill Weeks:** The UK would need to have facilities, ideally, for dealing with those. Otherwise we would have to export them to another European country for them to deal with them. These end-of-life vehicles will have to be dealt with somehow.

**Q25 Chair:** You mentioned earlier the size of the lithium battery. How big are they?

**Gill Weeks:** I'm not an expert on that, but my understanding is that they are about the size of your boot, are they not?

**Matthew Farrow:** They are pretty big, yes.

**Chair:** Are they substantially bigger, just to give us an idea?

**Matthew Farrow:** Yes, they are bigger than traditional car batteries, much bigger.

**Q26 Chair:** In terms of transporting them abroad, it would be some substantial cost, if we did not have the solutions here as well?

**Gill Weeks:** The NPS mentions self-sufficiency. There is, not necessarily a regulation as such, but a desire for the UK to be self-sufficient in waste management.

**Matthew Farrow:** That is an important point, because the details of the NPS, where it touches on self-sufficiency in two or three different sections, is slightly unclear in one or two cases. As Gill says, the general flavour from the wording is that the Government sees it as a desirable, if we can move as close to self-sufficiency as we reasonably can, but the wording slightly varies about disposal facilities. We would feel as an industry, not surprisingly perhaps, but I think the public probably would share the view, that unlike general waste, for hazardous waste it is right and proper for the UK to deal with that within its own borders—both, without overdoing it, from a moral point of view and from that of transport and the risk of accidents through long-distance transport of hazardous waste and so forth. The NPS could possibly be slightly tighter and clearer on making that point.

**Q27 Chair:** Would that go for—well, I call them ghost ships? I have forgotten what the correct term is, but I mean ship recycling. Would you say that goes for ship recycling as much as for batteries?

**Gill Weeks:** Nobody here on this panel is an expert on ship recycling, but I guess that is very, very specialised and that you have to weigh up the employment side against the fact that you might be dismantling somebody else's ships.

**Chair:** I think that we have the technology.

**Gill Weeks:** We have the technology and it is employment for the UK. Whereas we had ship building, now we can have ship dismantling.

**Chair:** We will not go there.

**Matthew Farrow:** We can't quite say "progress".

**Q28 Richard Drax:** Good afternoon. The ESA's written evidence did not specifically address new technologies. Does the NPS provide sufficient flexibility to accommodate new technologies that may emerge in the future? If not, how could the NPS be improved to provide this flexibility?

**Matthew Farrow:** Overall, we think it is reasonably clear in the NPS that the technologies they talk about are not an absolute list that is fixed. Whether we would actually want some stronger wording on that—I am not sure we would, to be honest. As it stands, it is flexible enough.

**Q29 Richard Drax:** It is, okay. Do you consider Part 4 of the draft NPS clearly sets out the assessment principles that the IPC will use to assess applications?

**Matthew Farrow:** We have one or two specific caveats about those, which I think were referred to in the evidence, about things like whole-life costing. The bulk of the criteria set out are appropriate, but we wonder whether one or two—if you like, we could perhaps touch on the whole-life costing issue—would lead to more complication, cost and trouble all round than it is worth.

**Dr Wilson:** We would question the merits of that to the overall planning decision. We are not really quite sure what the purpose of it is and we are certainly not sure about what is intended to be produced. There are one or two points in the NPS where it is suggested we should do a certain assessment, but no guidance as to how that assessment should then be undertaken. We are concerned about this creating new industry, as has happened in the past, unfortunately, with planning guidance. Yes, on whole-life costing, we would like to understand a lot more about what that actually entails and we would question whether it was necessary. As Matthew has just stated, we are happy with the broad assessment criteria. I have had people consider the appropriateness in their particular areas of expertise, and they are generally consistent with what you would expect from current Government planning policy. There is nothing there that either concerns us or is unexpected.

**Q30 Neil Parish:** The CIWEM comments that the NPS has "done little to improve the really difficult grey area between planning and environmental permitting". Does the NPS clearly set out the distinction between the operation of planning and pollution control regimes?

**Matthew Farrow:** We were discussing this earlier.

**Dr Wilson:** If I may explain the grey area. The grey area is really about planning authorities and Environment Agency officers understanding what their role is, in my view and my personal experience. I believe that the planning system has clearly set out the requirements for dealing with land use consequences and that the permitting system is clear about pollution control. There is planning guidance on pollution control and there is planning guidance about how the two regimes interface. There is clearly an overlap between the two. The NPS says exactly what I would expect it to say in terms of planning policy and also makes clear that there should not be duplication, which is one of the major concerns of

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industry: that it does not have to be regulated by two people for the same issue twice. Our view is that it is really a training issue for the Environment Agency and the planning authorities, rather than a concern that the NPS or any other planning policy has not made it clear on many occasions exactly how the interface works.

**Q31 Neil Parish:** If you were going to build a house in a floodplain with a one in 100 years chance of flooding, the planning authority could decide to overrule the Environment Agency if they object. Surely in a case of hazardous waste, I would have thought it would be very difficult, would it not, for a planning authority to take that same line, because they are not the professionals who are dealing with the pollution side of it? How does it work? Can the Environment Agency actually block an application? Have they got those powers or are they a statutory consultee?

**Dr Wilson:** The Environment Agency is a statutory consultee to the planning system. They cannot overrule the planning authority. I do not know whether they could challenge them in the courts; I am sure they could but I have not seen that happen. It is quite clear: the planning authority makes a decision about land use. It takes advice from the Environment Agency, and planning policy and the NPS require that the decision-maker, rather than planning authority, should take account of that advice. I think that is right and proper. There could be circumstances where they may go against that advice, but we must not also forget that, a hazardous waste infrastructure, as it is being dealt with in this Select Committee, would be subject to a permit. If the Environment Agency will not issue a permit, there is really no point having planning permission.

**Q32 Chair:** Are you happy with the provisions as set out in the National Policy Statement, as regards building—they call it ‘flood zone’? Do you believe that is a robust enough test, the sequential test?

**Dr Wilson:** The sequential test is set out in floodplain policy PPS25, so the NPS could not go any further than that which is already set in policy. It is appropriate and there are circumstances where that policy may be overridden.

**Q33 Chair:** Is that because they have to be sited near water?

**Dr Wilson:** Yes, some facilities would be sited near water. That does not mean they necessarily have to be sited in a floodplain. There are locations that you would choose. Frankly, I would be surprised if this sector made applications in a floodplain, unless there was a very good reason. It does not have a good experience of floodplains.

**Q34 Neil Parish:** I was really just giving that as an example. You were basically saying that a site could be granted planning permission but, if the Environment Agency did not think the environmental controls were right in that particular instance, they would not issue a permit so that could not be used, irrespective of whether it had planning permission.

**Dr Wilson:** Absolutely.

**Q35 Dan Rogerson:** The IPC has suggested that applications for environmental permits and other necessary consents should be made before the application for development. Do you agree that this would be a more sensible approach than making separate applications concurrently? Going back to the Planning Bill—I served on the Committee when this went through back in 2008—there was a view from some companies that you do not really want them going alongside, because you are spending both lots of money at the same time. If one of them goes, you have wasted it. What is the best approach?

**Matthew Farrow:** You have to have both, of course.

**Dr Wilson:** The ESA position—this issue has come up many, many times, and you have identified at least one—is that it is horses for courses. It depends on the circumstances as to whether you should: a) resolve your permitting issues before; b) resolve them during or; c) even wait until after you have planning permission. To a degree, it depends on what the key issues are relating to development. If pollution control is the absolute key issue, you may want to get that resolved early on. In any circumstances, you would get it resolved in terms of principles and that the Environment Agency is satisfied that they would be able to issue a permit. It is foolish to make a planning application without having that confirmation.

**Dan Rogerson:** So a pre-application option.

**Dr Wilson:** Absolutely. The other thing to be aware of is that, for many waste facilities, the Agency is unable to issue a permit until planning permission is in place.

**Q36 Dan Rogerson:** An alternative suggestion, a very different one put forward by the Chartered Institution of Water and Environmental Management, is that you would merge the two processes and have one common process. What do you think about that, if that happens, and that the NSIP should cover that?

**Matthew Farrow:** Just for the larger installations?

**Dan Rogerson:** Absolutely, yes, for the ones that would be covered by the IPC.

**Matthew Farrow:** My instinct is that it would be difficult to do it. It is a nice idea, hard to do in practice.

**Dr Wilson:** I would think the fundamental difficulty is that you have two regulatory systems that you are trying to tie together. That would make it very difficult. I am sure it is possible, but I cannot particularly see great benefits from it. We have a system that works in a way and is satisfactory in that respect.

**Matthew Farrow:** They are trying to do two different things—planning and pollution control.

**Dr Wilson:** That is because of the way that we define planning and pollution control.

**Dan Rogerson:** Again going back to the passage of the Bill, in certain other areas, they thought it would be more possible to combine other aspects of infrastructure, with separate permitting agreements, because planning was covered by different Acts for, say, transport, electrical issues, some of the road

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supply issues and all those kinds of things. It is a different situation.

**Q37 Chair:** The IPC itself has raised some questions about the terminology used. Do you think that the NPS, in its draft form, should be more consistent and use more defined, carefully crafted terminology in describing the relationship between the IPC and other relevant bodies for this purpose, such as the Environment Agency? It says “liaise”, “consult”, “to seek advice” and “cooperate”. Are you exercised by this at all?

**Matthew Farrow:** I do not think it came out in our initial work on the NPS with the companies. Looking at the IPC submission, they seem to make a reasonable case. Obviously they are the body; in a sense, this is partly aimed at them, partly at the industry and the public. In principle, the Government ought to take their points into account.

**Dr Wilson:** I have not gone back to look at the context of each of those individual points, but I certainly think it does need to be consistent, unless there is a context in which it is worthwhile to use a different terminology. Otherwise, it will become confusing, because people will assume that it has been phrased differently for a reason. When you have been to a planning inquiry and you are mulling over policy, those are the sorts of things you can spend many hours on, so consistency is very helpful.

**Q38 Mrs Glendon:** You have expressed concern about the requirement for applicants to carry out an assessment of community anxiety and stress in relation to the impact on health. Do you think that this requirement should simply be removed from the National Policy Statement or do you accept that it is necessary, but there is a need for clear Government guidance on undertaking such an assessment?

**Matthew Farrow:** I think both would be options, to be honest. We recognise as an industry that, as the NPS says, these sorts of facilities often cause concern among communities, and so our member companies look to explain how the site will operate and the technology. Again, we can go into examples and details of all the classic ways that tends to be done, through open days and so forth. The principal concern we had about that section of the NPS, which is only a couple of lines but is almost a throwaway section, is that it is very unclear exactly what the company is expected to do—what sort of assessment, what sort of ways it could seek to allay anxiety and stress that was seen to be there. Either removing it or, if it stays, giving much clearer guidance as to what exactly companies would be expected to do—that was our position. Again, Gene, I know you have thought about this a bit.

**Dr Wilson:** It is part of the perception issue. Hazardous waste, among a number of other types of development, nuclear power and so on, all have a major problem with perception of what the impacts are, rather than with the actual impacts. As you probably know, perception is a material planning consideration if it is objective and if it has land-use consequences—all quite difficult things to assess. That is what is in current planning policy. The

introduction of an assessment of stress and anxiety is not in any other current guidance that I am aware of. There is no guidance on how you would deal with that. I think that, given that if you are serious about putting in hazardous waste facilities, you will make sure that they are technically appropriate, that they are in the right location and that they meet policy, perception is essentially your biggest issue. I believe that it should be given considerably more consideration in the NPS, also given the fact that it is a factor that has been discussed and addressed at many planning inquiries now, so there is a wealth of experience of dealing with it. It is appropriate that the NPS should actually give some guidance to the IPC about how it should assess these issues, and therefore to the applicant, about how it should present information on them.

**Q39 Mrs Glendon:** As a former member of a local authority planning committee, I understand this is a very important issue. Do you think that the Government should take a more proactive role in seeking to alleviate the stress and anxiety that may be caused by unfounded perceptions of the health risks caused by such facilities?

**Dr Wilson:** On a much broader issue, it is largely about education, as I am sure you appreciate—about people understanding what the developments are about. We have a national issue with that on a number of subjects, including hazardous waste, including nuclear power and so on. On a more specific basis, certainly the public consultation engagement exercises that our companies undertake and many of the companies in ESA would undertake are part of the process of trying to alleviate that issue. Where the difficulty comes for decision-makers—the people who are standing there saying what is happening here—is that it is very difficult. How do you measure the level of anxiety or stress? How do you tell the scale of the perception of harm, when there are a small number of people who make a lot of comments and are very vociferous and give an impression of a very great number of people upset and concerned? It is very difficult, because you do not know. As an applicant, I find it very difficult to assess and the decision-makers are in the same boat. I am sure you have had the same experience. Is it just the person who is actually speaking to me or does the whole community have a concern about this issue?

**Matthew Farrow:** Part of the challenge for the NPS on this is that, compared with technologies like nuclear power stations or even traditional energy from waste plants for the household sectors, as colleagues have been saying, this is such a varied sector. People have a perception of the idea of a hazardous waste facility being constructed near them, but actually they could be talking about a wide range of different types of site and facility. That perhaps makes it harder for the Government, the industry collectively or the NPS to address the perception issue for hazardous waste than that for other technologies that are more uniform.

**Q40 Mrs Glendon:** Do you think it will probably be down to each individual application and maybe it is not something that the Government could make an

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intervention on generally? As you say, it is an education issue about the whole issue of what hazardous waste means.

**Matthew Farrow:** I think it is a little bit of both. Inevitably, it always comes down to the site. It is quite right that companies are expected to do what they can to explain and allay unfounded concerns. In broad terms, of course, we welcome the Government emphasising the fact that, as a society, we expect hazardous waste to be dealt with somewhere to the highest technical standards and those sites have to be built. If you look at the Waste Review, which was about non-hazardous waste, the Government committed sensibly to producing a guide to energy from waste and a range of technologies, partly as its contribution to trying to broaden the understanding among local authorities, communities or stakeholders. That is harder to do for hazardous waste, because the range of technologies and the scale of the sites is so different, but obviously we welcome any support that the Government could give on that.

**Gill Weeks:** On the perception issue, it is very difficult to just get across to the public what hazardous waste is. I always use the analogy that most people are quite happy on a Saturday to walk up and down the aisles of B&Q. They are in a DIY warehouse and they are happy, but something like 80% of the paint, glues, garden sprays etc on those shelves in B&Q, if it were to be discarded, would be hazardous waste. It is that kind of thing. People see somebody bringing a hazardous waste plant to a field near them, and they are up in arms about it. Of course now, with social networking and everything else, it is easier for the level of anxiety to be raised by others. I think that is something that we will have to address: how we can satisfy the IPC that we have addressed the stress issue. As Gene said, I do not know how that is ever going to be, "Yes, you have done enough."

**Q41 Chair:** You mention that guidance should be given to the IPC. Of course, when the IPC goes, we are going to have the Major Infrastructure Planning Unit (MIPU) taking over its role. I have not sat on a local authority, to be honest, but when there was an application for a waste disposal site, the scientific studies that were thrown at us showed there were carcinogens or claimed that there were potential carcinogens. It was obviously used to whip up a certain amount of hysteria to ensure that the planning authority turned the proposals down. Do you think there is less possibility of that happening under these NPS procedures?

**Gill Weeks:** No.

**Chair:** More possibility?

**Gill Weeks:** My immediate reaction was no, I do not think there would be less possibility. If anything, there would be more, because you now have specifically to address the public concern. You almost have to go out, knock on doors and say, "Are you concerned?" The answer is likely to be yes.

**Chair:** That is why I think it best to get in on the ground, at parish council level, at the earliest possible stage. Assistance to a village hall goes down very well. It would be something like that.

**Q42 Richard Drax:** Part 5 of the NPS deals with generic impacts, as I am sure you are aware—flood risk, historic environment, noise vibration, etc. The next two questions are based on the ESA's written evidence and I think they have been drafted from concerns that the ESA has raised. The first question is, does Part 5 of the draft NPS correctly identify the generic impacts relevant to all hazardous waste infrastructure projects? As part of the same question, are there any impacts that you believe have either been excluded erroneously or omitted?

**Dr Wilson:** We made a minor comment on insect infestation, because we are not really aware of insect infestation being a problem with hazardous waste. Because it is hazardous, they do not seem to infest it.

**Q43 Richard Drax:** That is actually my third question, so you have jumped the gun there. Actually, do you agree with the inclusion of insect infestation in the list of generic impacts? That was the third question.

**Dr Wilson:** We are asking, why it is included? We are not sure why it is included.

**Richard Drax:** You are not sure.

**Dr Wilson:** It seems to be given a profile that it does not have.

**Matthew Farrow:** We do not see a need to include that as relevant.

**Dr Wilson:** Generally, as I indicated earlier, we have looked at, and had experts in their field look at, the various sections of the generic assessment—so an archaeologist looking at the archaeology, geologists and so on—and they have all come back and basically said the same thing, that it is appropriate, it is what we expect to see. There is very little that would leap out at us as being of concern.

**Q44 Richard Drax:** Secondly, do the—there are quotes here; one assumes ESA's quote, I am assuming. Do the "applicant's assessment" sections in Part 5 provide sufficiently clear guidance on how the applicant should address each generic impact?

**Dr Wilson:** The answer is much the same. In general, we are comfortable with what is being suggested.

**Q45 Richard Drax:** Finally on infestation—I do not want to dwell on it too long—are you aware of this problem having arisen in the construction, operation or decommissioning of hazardous waste facilities in the past?

**Dr Wilson:** No, we are not. That is why we are querying it as a possibility.

**Richard Drax:** It is a bit of a no-no really. Thank you very much.

**Q46 Chair:** You have already answered on whole-life costing, for which we thank you. You all seem remarkably relaxed about this, which is clearly something that is always very welcome when witnesses appear before us. Obviously, you are taking an industrial view; do you think this will be shared by others in the industry?

**Matthew Farrow:** Is that across the waste management industry?

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**Chair:** Yes, and welcoming the NPS, as you appear to.

**Matthew Farrow:** Certainly ESA represents all the major companies active in this field and what you have heard today is our collective view. I guess I would return briefly to the point I made at the start, which is that the NPS, we feel, with the caveats we have made, is broadly appropriate in terms of trying to take the hazardous waste management strategy that the Government has published and say, "Right, these are the sorts of facilities we would expect. This is how they should be assessed."

As an industry, we are keen to make these investments and are gearing up, but the concern ESA members have is that a lot of new regulation is coming into play, the waste hierarchy is being applied to hazardous waste and so forth. The concern is, if enforcement of that by the Environment Agency is not sufficiently rigorous, we are going to find a lot of sub-optimal treatment processes, which perhaps were acceptable and appropriate in the past but, judging by the Government's wording on this, are not what we as a country we should be looking for in the future. ESA members feel that they will persist in the market for a long time to come. Often that might occur because permits are written very widely and they are not reviewed that often. The concern is then that, if I build a state-of-the-art plant, am I going to get the waste streams in the market, because there might be cheaper options, either in other member states in the EU or in the UK through non-ESA members, who are going to undercut me? The NPS is written as if it is an assumption that this is what we need; the market will deliver. In principle, yes, but the concern will be enforcement, particularly given the budgetary constraints on the Agency.

**Q47 Chair:** Are they able to undercut you in other countries because they have a bigger landmass, so it is not such an issue, or a swifter planning procedure? Why should they be in a position to undercut what your members are able to do?

**Matthew Farrow:** Often they are quite technical issues. You can export hazardous waste for recovery. My understanding is that, in some cases, that might go to other member states where municipal incinerators are classed as recovery but allowed to take some hazardous waste as their waste feedstock. We would argue those incinerators in other countries are not operating to the sort of standards that the specialised hazardous waste incinerators in the UK do. Yes, it is technically allowed, because it is an export for recovery. In those quite technical areas, we feel there might be a disincentive for ESA members to invest in what I think the Government and the NPS are looking for.

**Gill Weeks:** The export of hazardous waste is a big concern for us. The reason why other member states can do it cheaper is that generally there is an over-capacity in northern Europe at the moment in energy from waste plants and incinerators, whatever we want to call them, and so they are selling off their free capacity, in a way, so you can ship waste over to the northern member states relatively cheaply. The other thing you tend to find is that some member

states' governments take a more relaxed view of how they classify things as recovery. To give you one example, if you backfill the German salt mines with hazardous waste, it is regarded as a recovery operation because they say they need to backfill to prop up the mine.

**Q48 Chair:** I am slightly concerned. If there is an EU definition in the Directive of what constitutes hazardous waste, it all seems to come down to what Mr Farrow was saying about the definition of recovery. I am slightly concerned about why it would be allowed to enter a general energy-from-waste plant.

**Gill Weeks:** In the UK, the Environment Agency, not without exception but generally has tended to permit and the applicant applies for municipal waste only. In other member states, they have applied for municipal waste with, say, up to 5% or 10% hazardous, which can go in as well. Their facilities are permitted in a slightly different way. It is just the way that their permits are done.

**Q49 Chair:** Obviously we will be taking evidence from the Environment Agency on this, but when there was an energy-from-waste application in what was my constituency—sadly it is not my constituency now—they tend to say, "We will build a bigger chimney," which is not necessarily what those living closest to it want to hear. What I do not understand is that, in Scandinavian countries especially, they seem to accept these facilities as being a fact of life, because they want to use the products; they live in an industrial society, but the waste will be disposed of in an ecologically and environmentally friendly way. Why is that debate not happening in this country?

**Gill Weeks:** That is a very good question. As you say, you can go to places, and I have been to a place like Finland, where Friends of the Earth and Greenpeace will actually support an application for an energy-from-waste plant, because it is giving energy back to the local community and they are able to use the heat, etc. In this country, they actively object from day one. It is really a cultural thing.

**Matthew Farrow:** It is partly, I suppose, because in the UK, going back some years, we have had a history of landfill as a main disposal method, of course, which you have not had in many European countries for geological reasons. Also, as Gill says, culturally, district heating systems are much more common on the continent, but they are seen as not quite the way we do things in the UK.

**Q50 Chair:** Forgive me, because my uncle gets his heating and electricity from that in Denmark. We have the acceptance there that underground heating is a good thing. There are EU standards to show that there should be no residue going into the environment. Why are we more sceptical, as the British public, in accepting the fact that this is safe, when the other countries accept it?

**Gill Weeks:** My understanding, and I might not be 100% right in this, is that, in a number of member states, the local authorities—Länder, or whatever they are—have an interest in those plants, so they build them with a partner or a number of partners, so the

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facilities are actually part-owned by a number of local authorities and, say, a commercial company that runs it. There seems to be more of a benefit. The community seems to feel they own it more, and they seem to get some sort of planning gain or benefit in terms of cheaper electricity if they live near one of these facilities.

**Q51 Chair:** I think you produced a manifesto before the last election. Is that something that you try to sell to the different parties?

**Gill Weeks:** Yes, we would love to see it being more accepted. There is one Energy from Waste (EfW) plant in Austria where they actually light it at night. It is a beautiful facility in the middle of a town, covered in tiles and lit up. We have seen from some of the newer EfW plants that have been built in the UK that, architecturally, people are starting to try to make them look more attractive, so that they are more acceptable. The big issue is trying to get the heat used in the UK, finding enough facilities and operations that will take the heat. My company has one in Sheffield, where we have an EfW that is connected to the district heating.

**Q52 Chair:** Is it the case that you have to build? There is SELCHP, as a combined heat and power station in southeast London, but it never connected in. I could not quite understand. I think they got the permission.

**Gill Weeks:** It is getting the permissions and actually getting the pipe work, connections and everything in. It is quite difficult to retro-fit.

**Q53 Neil Parish:** I think quite probably we do not incentivise enough for people, do we? They do not get enough benefits and then they are not quite so keen, whereas if they got greater benefits they might be keener. The question I wanted to ask is: what about the export of waste beyond Europe, to the Middle East and the Far East? Does that happen quite a bit?

**Gill Weeks:** With hazardous waste, no.

**Neil Parish:** Is it not allowed to be exported or what?

**Gill Weeks:** By the UK Government, Defra, it is forbidden to export waste for disposal from this country unless it was a very small quantity of a particular metal that had a very high value or something. To my knowledge, all waste for disposal is banned, so you can export only for recovery. Export to non-OECD countries of what is classed as Red List waste is very strictly controlled so, no, hazardous waste does not leave the UK to go outside the EU.

**Chair:** Legally?

**Gill Weeks:** Yes.

**Q54 Chair:** One of the things we are obliged to do as part of our parliamentary scrutiny is to confirm that the consultation that has been followed by the Department, in regard to the NPS, has been followed. A number of criteria have been set out for that purpose. Are you satisfied as an industry that there has been a proper consultation process on the NPS?

**Matthew Farrow:** In terms of the formal procedure, yes we are, and we are preparing our response to the formal consultation. In terms of consultation with the

Department while it was being worked on, I will look to Gill on whether we felt comfortable with Defra's engagement before they actually published the consultation, which I guess is partly what your question is getting at.

**Gill Weeks:** I think it is fair to say that, through the hazardous waste groups that Gene and I sit on, we have had quite a lot of dialogue with Defra about this, so I think I am quite happy.

**Q55 Chair:** Are you confident that the publication of the draft NPS has received a sufficiently high profile, in the industry as a whole, to allow all interested parties to be aware of and respond to the consultation in the timeframe allowed?

**Gill Weeks:** Whether non-ESA members have picked it up, I am not quite sure, but there has been a reasonable amount of publication in the trade press and in general.

**Q56 Chair:** Can I just take you back to what you said, Gill Weeks, about the technical amendments before the committee of experts in Brussels? I know you might track it and you might be aware of it; do you feel that you are sufficiently formally consulted on those, because they will have a major impact on your industry to the extent that there is a mechanism to amend them, in any way, before it is agreed there? Obviously once it is agreed, it is very difficult to change.

**Gill Weeks:** It is difficult to answer that, because it is really how much time we as a company and the representatives want to put into these things. There are lots of debates going on in Europe. We have some dialogue with Defra through these various groups that we have, so they will have a representative who goes out to Brussels and sits out there. The Environment Agency generally puts a technical person on that group as well. Whether you get enough feedback—it is not always clear what the UK position is before it goes to some of those meetings, so it might be nicer to have a little bit more from Defra before they go to meetings and put the UK position. Could I just come back though, Madam Chairman? I realised after answering Mr Parish's question about exports, I am not an expert on WEEE<sup>1</sup> and electrical equipment.

**Chair:** WEEE is not our responsibility.

**Gill Weeks:** Okay. When I said no hazardous waste goes outside the EU, I am not sure that is a true statement when it comes to WEEE. I just wanted to clarify that.

**Matthew Farrow:** If I could briefly add to Gill's original point about the technical committees, I think, as she implies, the feedback from Defra is a little bit variable sometimes. The broader point I would make behind that is that Defra and the Environment Agency of course have pretty tough budget conditions and fewer people doing lots of jobs. A lot of this stuff is very technical, so we are looking ideally to real experts in Defra. That feedback is a little bit variable and, going forward, it is important that Defra is able to reassure us that they have the right people who know their stuff, who can liaise with the industry so we can help.

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<sup>1</sup> Waste Electrical and Electronic Equipment.

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**Q57 Chair:** Dr Wilson, you provided details of the costs of planning applications. I think you gave a percentage of the cost of the plant itself. Is there any way you could give us more detail in writing? That would be very helpful to the Committee.

**Dr Wilson:** Yes, I would be happy to do that.

**Q58 Chair:** As a percentage, how much of the industry do you represent?

**Matthew Farrow:** Of the broader industry, so non-hazardous as well as hazardous, around 80% by

value, so all the major companies that operate in the UK, plus a good slice of the SME market. For hazardous waste, it is similar or higher possibly, because there are a much smaller number of companies. Certainly, all the significant UK companies that operate in this market are within our membership. There may be one or two smaller ones that would fall outside.

**Chair:** Thank you very much indeed for being with us, participating and for being so generous with your time. We found it enormously helpful.

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## Wednesday 14 September 2011

Members present:

Miss Anne McIntosh (Chair)

George Eustice

Mrs Mary Glendon

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### Examination of Witness

*Witness:* **Jan Gronow**, Vice-Chair, Waste Management Technical Panel, Chartered Institution of Water and Environmental Management, gave evidence.

**Q59 Chair:** May I welcome you, and may I apologise for the delay in starting? Thank you very much for your patience. It is just with the Parliamentary programme and trying to keep everything together. We are very grateful to you for participating in this inquiry. As you are aware, we are taking evidence on the Hazardous Waste National Policy Statement. Just for the record, would you like to give us your name and position?

**Jan Gronow:** Thank you. I am Jan Gronow and I am Vice-Chair of CIWEM's Waste Management Technical Panel. I am a visiting chair in waste policy at Imperial College, London and an independent consultant. I am not actually a hazardous waste specialist; I am afraid our hazardous waste specialist cannot be with us today, but I did represent the team in the UK that negotiated the hazardous waste directive in Brussels, and I was a member of the technical adaptation committee that produced the European Waste Catalogue, which was the first waste list.

**Q60 Chair:** Excellent. We are very grateful to you for being with us today and contributing. Could I ask whether you agree with the National Policy Statement's assessment of the need for large-scale hazardous waste facilities, including the need for hazardous waste landfill?

**Jan Gronow:** Yes, in general we do. I am not sure that the assessment could not have been done rather better, but I do agree with the outcome.

**Q61 Chair:** Do you believe that, under the new provisions of the NPS, there might be a flood of applications?

**Jan Gronow:** I really have no idea, I am afraid.

**Q62 Chair:** Do you believe there might be any cross-border implications of the way that it applies in England, Scotland and Wales?

**Jan Gronow:** No, I would not have thought there would be serious problems.

**Q63 Chair:** As an organisation, do you believe there has been sufficient consultation of proposals from Brussels and that you were given both sufficient notification and knowledge of what is coming in, and a sufficient lead time? Do you feel that there was sufficient and adequate consultation?

**Jan Gronow:** I think so. Particularly with the implementation of the Waste Framework Directive, I think Defra were absolutely fantastic just recently. They really were interested in people's views and they

ran lots of meetings for us. One of the problems is that if you look at the terms of reference of the TAC, Technical Adaptation Committee, there is something in there about keeping what we were doing private, which seems very silly in this day and age. I do not think they have sorted it out completely yet. It seems essential that we come home and talk to stakeholders about it, but there is this little niggle at the back about how you do that.

**Q64 Chair:** Do you have any views yourself what would be the best forum for this dialogue?

**Jan Gronow:** We all have the opportunity to see what is coming up and it is not as though it does not take very long. I helped to negotiate the Landfill Directive and that took 12 years, so that is plenty of time for people to keep up with things, isn't it?

**Chair:** That is an interesting example; thank you very much.

**Q65 Mrs Glendon:** Good afternoon. Should applications for a new planning permission for existing facilities that are over the NSIP threshold be dealt with by the IPC or under the local planning regime?

**Jan Gronow:** This issue is debatable, but I think generally we are of the view that it should come under the new regime.

**Mrs Glendon:** Thank you. Did you say under the IPC or under the local planning?

**Jan Gronow:** Under this new regime, the IPC.

**Q66 Mrs Glendon:** Thank you. In your evidence, you mentioned that the NPS is unclear in its explanation of how the amount of hazardous waste dealt with at the facility is to be defined, citing the example of ship-recycling facilities. Do you have a view on what the definition should be?

**Jan Gronow:** It is probably not necessary for all types of facility. I think ship recycling would probably suffer from this the worst, but there are limits set in the Control of Major Accident Hazards (COMAH) Regulations and we wondered whether they could perhaps be something like that. It might be worth looking at the COMAH legislation and seeing whether for those hazardous substances that are likely to occur, which I think would probably be a relatively short list, one would be able to set some limits in the same way.

**Q67 George Eustice:** One of the things that has come out in earlier evidence is some of the duplication between planning and environmental permitting. Are there arguments for and against merging that or

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integrating those procedures in some way, because they tend to be considering similar factors?

**Jan Gronow:** First of all can I say there is a mistake in our evidence, which is completely my fault? I have quoted PPS 26 and it should have been 23, so it would be useful if we could correct that. We think there are a lot of pros for putting them together because you are asking an awful lot of the IPC in knowledge to go very far with an application without a great deal of help, I suggest, from other agencies. I know it is difficult because we are dealing with two different pieces of legislation, but it does seem to me that, quite honestly, other agencies, particularly the Environment Agency, are going to have to do a lot of what they would need to do for permitting right up front with the IPC to provide sufficient advice to the IPC. I think this is true for other agencies as well. I do not think you can expect a body to have that range of knowledge on the variety of environmental issues, particularly, without a lot of advice from the various agencies. Therefore, why not do it all together?

**Q68 George Eustice:** Either do it all together, or are you suggesting that one should come before the other—the environmental permitting comes first and then the IPC consider the planning aspect after?

**Jan Gronow:** I can see why it needs to be two separate things, but we managed to implement the Landfill Directive through the IPC legislation, which was not easy, but we did it. It is difficult now because, when I was in the Department for the Environment, it was one Department and you could have knowledgeable conversations with those responsible for waste planning and it was easier. I just think it is a waste of resources; we just muddle along.

**Q69 George Eustice:** So on balance you think there is a case for just integrating the two?

**Jan Gronow:** Yes, but you have to find the time to do that properly, of course.

**Q70 George Eustice:** One of the things that has come back from the IPC in their evidence is that some of the terminology used in the NPS—and I know we have come across this in other NPSs as well—is perhaps a little bit too vague, with terms like “liaise”, “consult” and “seek advice”, and that perhaps more tightly defined terminology would lead to more clarity about where responsibility lies. Is that something you would agree with?

**Jan Gronow:** Absolutely, and there are a couple of instances when it says the IPC “shall take notice of this guidance and other things”, and I do not think they would find it terribly helpful. If you are going to set out what they should take note of, then let’s put it all in one document.

**Q71 George Eustice:** In part five of the NPS, it sets out all of the relevant generic impacts of hazardous waste. Are you satisfied that it covers all the areas necessary and defines them clearly enough?

**Jan Gronow:** Yes, we are satisfied. I am not sure that it does it as well as it might have done, but yes, I think it covers all the necessary issues.

**Q72 Mrs Glendon:** I just want to ask you about perception. Is there a danger that public perceptions of health risks could hinder the development of new facilities that would actually improve overall environmental outcomes for hazardous waste?

**Jan Gronow:** I am not sure I quite understand, but the issue of public perception is an extremely difficult one.

**Mrs Glendon:** Does it have any influence on it?

**Jan Gronow:** There is very little overlap between fact and public perception, and it is an enormous problem. It is very rarely that planning permission is given for a waste management facility of any sort without there being an appeal. You only have to look on the websites with the strange things that are being said about the various incinerators proposed in Wales to see how the public feel and perceive the risks. The wording in the document is quite dangerous in dealing with public perception. That really needs thinking about.

**Q73 Mrs Glendon:** It is a big issue.

**Jan Gronow:** It is a big issue, and I think it opens the door for some large problems.

**Q74 Chair:** Do you think it is partly that some of these sites are not necessarily appropriate and that they are being put in more rural rather than more urban, industrial areas or is just on principle?

**Jan Gronow:** I do not know, but I do not think it is anything to do with actual reality or anything like location. I think it is just general perception that we do not want to live near these things.

**Q75 Chair:** Who do you think should be trying to improve the public’s knowledge or perception?

**Jan Gronow:** That is extremely difficult. The waste management industry and the Environment Agency has done quite a bit of work on how you approach communities about this sort of thing. It is not a science; it is an art, really, of whom you approach: you approach small groups; you send academics and not consultants because people think that academics do it for love and consultants do it for money; and you send women and not men to talk to them. You talk to small groups—the Women’s Institute—and not have huge public meetings. That smells slightly of manipulation, although it is what you have to do if you want to bring people onside, so I think it is extremely difficult.

**Q76 Mrs Glendon:** Is there anything that you think Government could do in education in this area with the public?

**Jan Gronow:** It is difficult. Since foot and mouth, BSE and these things, Government science has taken a bit of a knock in credibility, and people do not understand the nature of risk. They want a yes/no answer, so I still think it is very difficult. Both sides need to work on it—Government, the agency and operators—and need to use best available techniques, but it is an uphill struggle.

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**Q77 Chair:** The incinerator you mentioned in Wales, is that a hazardous waste incinerator or a general energy from waste incinerator?

**Jan Gronow:** No, I think it is a municipal waste incinerator. There is more than one; there are several of them being considered.

**Q78 Chair:** Do you think we can learn from other countries? I have family in Denmark—and it might again just be municipal waste—where there is a substantial community benefit through distance warming. With new build, you can place an incinerator perhaps with some new housing, so they get reduced costs of hot water and heating.

**Jan Gronow:** Yes, I certainly think so. There was a rumour around some time ago that Treasury was looking at the sorts of benefits that might be provided. I do not know what happened to that or whether it was just a rumour, but certainly in other countries they do this better and they do it differently. France does it completely differently and they do not seem to have too much trouble siting nuclear power stations in France, do they? One of the issues we never think about though is population density. It is much easier to retrofit stuff in Scandinavian countries than it is here or in the Netherlands, where we have high population density. That makes a difference. If you talk to waste management operators at the moment, they say retrofitting these facilities is just not financially viable for them at the moment.

**Q79 Chair:** Do you have a ballpark figure of what an individual facility would cost?

**Jan Gronow:** I really do not know.

**Q80 Chair:** Do you believe that the National Policy Statement clearly sets out its support for the development of new and emerging technologies?

**Jan Gronow:** Yes, I think it does.

**Q81 Chair:** And is it flexible enough to accommodate new treatment methodologies that may come forward in its present form?

**Jan Gronow:** Yes, we think so. I would go back to this: do we really expect the IPC to have sufficient expertise to be able to determine whether a suggestion is viable? That is our only concern.

**Q82 Chair:** I understand that in line with the European Directive on strategic and environmental assessment, Defra has undertaken an appraisal of sustainability of the hazardous waste NPS. The Environment Agency has questioned the number of minor positive findings contained in this appraisal of sustainability. Do you agree with that analysis?

**Jan Gronow:** Yes, I think so. Reading through it, I found the appraisal a little bit short on water resources and groundwater protection, but I think it would be worth revisiting that table towards the end of the connections between the key policy and the particular issues.

**Q83 Chair:** Do you think that the appraisal process has been sufficiently robust?

**Jan Gronow:** Yes, I think so. It could have been better, but I think it is good enough.

**Q84 Chair:** Just returning to your concern about public perception, do you think we are going to face a crisis in the country, in the sense that there is such a public outcry every time a planning application comes through that we will not meet the requirements of hazardous waste disposal, even under the NPS?

**Jan Gronow:** That's difficult, isn't it? I do not think so. Perhaps if it is taken in the form it is at the moment and nothing is done about having to do an assessment of people's fears then that does open the door for a lot of problems, and you cannot see the cut-off to it then. It just seems wide open. If that is not changed then there is a possibility that setting up something like this has no benefit.

**Q85 Chair:** Earlier you questioned the expertise that the IPC has. Once the IPC is abolished, will your concern disappear?

**Jan Gronow:** Not exactly. I have a tremendous regard for the planning inspectorate and the care they take over the work they do. Let's leave it at that. I just do not think any one person or any small group of people have the breadth of expertise to do this work without the advice of the experts—who are going to provide advice; it is just whether they provide it soon enough and whether they have the time to provide sufficient advice at the planning stage, and do not leave it until it comes to their permits, etc.

**Q86 Chair:** You did say that the appraisal of sustainability process could have been better. Could I press you? Could you be more specific on how you believe it could be better?

**Jan Gronow:** One of the arguments about moving to this new process was that at the moment the Secretary of State would have to make the decision, which I think was rather a silly thing to put in seeing that in a little while the Secretary of State will be making the decision. I would have left that out as a reason, I think. I do find it difficult to say exactly what was wrong, but I just did not put it down and think, "Yes, that is a really good job."

**Q87 Chair:** Thank you. I just noticed in your written evidence you confirm that, while from time to time incidents do occur, the safety record of the industry is pretty good, isn't it?

**Jan Gronow:** Yes, it is.

**Q88 Chair:** Is there anything else you would like to add?

**Jan Gronow:** One of the things that concerned us most was the issue of flooding and the issue of not being able to provide guidance on location. This is not in a specific sense, but the Environment Agency provides flood risk zones and the Environment Agency provides groundwater protection zones. I

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know that they are only general and advisory, but why could they not be used to move the issue along a little way? I really see no reason for not doing that. They would still have to be investigated in great detail, but I think it would help.

**Q89 Chair:** That is helpful. Just one last question if I may: in your written evidence you talk about grounds for refusal of consent and that “the IPC should not refuse consent on the basis of regulated impacts unless it has good reason to believe that any relevant, necessary operational pollution control permits or licences, or other consents will not subsequently be granted.” You say that “this may lead to a potentially confusing and even harmful situation”. Is there anything alternative you would propose?

**Jan Gronow:** I used to work for the Environment Agency, and it is a long time ago—I retired six years ago—but at the time the Environment Agency did not have the resources to respond in any great detail to planning applications. I am not sure it is a resource thing because what it seems needs to happen now is the resource that goes into permitting comes right up front at the planning stage and needs to be done at the planning stage. What worried us was if that continued and is still rather a generic response to planning from the Environment Agency and other agencies, who do not have the resources to do this thing until it comes to them properly, then you have a potentially difficult situation.

**Q90 Chair:** Could I just be clear? Is it the case at the present time that planning permission is in two stages?

**Jan Gronow:** Yes.

**Chair:** You have the outline planning permission and it is only at the subsequent stage. I tend to agree with you because there was a planning application for I think a general energy from waste proposal in my previous constituency, and the Environment Agency said we should have a bigger chimney. That was not what the residents wanted to hear. So are you saying you think they need more resources or that the resources they have should be used at the first stage, when the outline planning permission is?

**Jan Gronow:** Again, I might not be up to date with this, but at the time the Environment Agency was not paid to respond to planning applications. Therefore,

the responses were generic; the money came with the permitting. This may have changed—I do not know—but I just think it is slightly dangerous.

**Q91 George Eustice:** Just going back a step on what you said about flood risk, could you just explain what it is you would like to see included? It is obviously listed as one of the generic impacts in the NPS, but are you saying there is already data and much clearer guidance available somewhere else that should be imported into the document?

**Jan Gronow:** No. Everybody will use the Environment Agency’s stuff on flooding. It is just that we feel that if you look at PPG 25, which is all about how you deal with flooding in the planning aspect, they have procedures for working through the various flood risk zones. Actually, I would have thought there is a case for saying that you do not put this large infrastructure in anything else but flood zone 1—this is a very low risk of flooding—simply because it is not necessarily vulnerable but is actually a hazard to the local environment and people if it is flooded. You will have hazardous waste sloshing around inside houses and goodness knows what. It seems to me that it is sufficiently important, particularly when we are ring-fencing this larger group of facilities, that you would say, “No way” anywhere else.

**Q92 George Eustice:** It does depend slightly on the type of waste, I suppose, doesn’t it? Is that why they kept it generic, do you think?

**Jan Gronow:** Perhaps. I just think they have taken PPG 25 and said, “We will do it that way. We have done it that way before.” I may be wrong.

**Q93 Chair:** Do you believe the sequential test and exception test are sufficient?

**Jan Gronow:** Personally, I would not use either. I would just say “No way” in this case. If you look at the fire in Gloucestershire in 2000 that subsequently became flooded, you realise what a difficult problem you can have.

**Chair:** We are very grateful. Can we thank you very much indeed for contributing? We apologise again for the delay, but it has been a pleasure to have you before the Committee this afternoon. Thank you very much indeed.

### Examination of Witnesses

*Witnesses:* **Ed Mitchell**, Director of Environment and Business, **Andrew Coleman**, Senior Environment and Business Advisor (Planning), and **Gill Ross-Jones**, Senior Environment and Business Advisor (Waste and Illegals), the Environment Agency, gave evidence.

**Q94 Chair:** Can I thank you very much for joining us and participating in our inquiry on the National Policy Statement for Hazardous Waste? For the record, Mr Mitchell, would you like to introduce yourself and the positions of your colleagues?

**Ed Mitchell:** Thank you very much. My name is Ed Mitchell and I am Director of Environment and Business at the Environment Agency, and I have brought with me Gill Ross-Jones and Andrew

Coleman who are both senior advisors—Gill on the waste-site permitting side and Andrew on the planning side.

**Q95 Chair:** Excellent. Thank you very much, you are very welcome. Your initial analysis of data on hazardous waste arising in 2009–10 suggests that the National Policy Statement’s assessment of the need for infrastructure facilities should be changed. Is that correct?

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**Ed Mitchell:** No, the NPS was based on the latest data to hand when it was drafted, which is 2008 data. The 2009 and 2010 data does show a reduction in hazardous waste arisings, but there are two comments on that. One is that the amount of hazardous waste produced is quite lumpy year to year depending on big infrastructure projects, because a lot of it comes from contaminated land. For instance, something like the Olympics development generated a large amount of hazardous waste that showed up in the 2008 year. The other thing is that the types of hazardous waste that are covered by the statement of need in the National Policy Statement showed an increase in 2009 and 2010. Overall, whilst the figures do go up and down year on year depending on economic situation and other things, I do not think it undermines the case for the need for infrastructure.

**Q96 Chair:** Is there a concern that some applications are pending, being held back waiting for the NPS, and there might be a flood of applications once the NPS comes into effect?

**Ed Mitchell:** I might ask my colleagues whether we know of any that are pending in that way. I would observe that the number of hazardous waste facilities of the sort of size that are caught by the threshold in the Planning Act is small currently, so I am not really expecting a large number to come through. I do not know if my colleagues have any specific information on that.

**Andrew Coleman:** The IPC's website indicates that there are no applications in the pre-application or the application stages with them.

**Q97 Chair:** So you would not be aware if developers—?

**Ed Mitchell:** If somebody has come to us to start pre-application discussions, we would be aware. I am not aware that anybody has. To give you an example, I think there are currently seven hazardous waste landfills at the threshold of 100,000 tonnes a year. I think that is right?

**Gill Ross-Jones:** It is about 13.

**Ed Mitchell:** Sorry, but only seven actually met that threshold in the last year?

**Gill Ross-Jones:** Indeed, yes.

**Ed Mitchell:** So the likelihood of there being more than one or two coming up in the next five years is quite low.

**Q98 Chair:** Are you aware of any cross-border concerns of the way that hazardous waste will be treated post-National Policy Statement in England as opposed to Scotland and Wales?

**Ed Mitchell:** I am not aware of any. The NPS is quite clear on the policy framework around cross-border issues and the so-called proximity principle and the need for strategic facilities. If the question is about whether you think because of our process as compared with the devolved administrations we might somehow draw in hazardous waste from other places, I think it is unlikely that that would be significant.

**Q99 George Eustice:** You mentioned hazardous waste landfills. I think Northamptonshire County

Council have been critical of that being included, on the basis that they did not think there was enough evidence to suggest that you needed any. You yourself have just said you do not expect any to be coming. As I see it, there are only about eight. How satisfied are you that there is a need to have that actually referred to in this particular NPS?

**Ed Mitchell:** The NPS is very clear on the waste hierarchy and the fact that the first place you start is in not producing hazardous waste in the first place. The last place you go to dispose of hazardous waste is landfill. The need for facilities higher up the hierarchy is, I think, greater than for landfill. However, a number of existing landfill sites have time-limited planning permission, and they will need to renew that time limit in their planning. I imagine there is a possibility some would decide not to do that, which would mean we would need replacement facilities. I think it is wise the NPS covers hazardous waste landfill, but as I say, I think the likelihood of significant numbers coming forward is low. I do not know if colleagues want to add anything on that.

**Gill Ross-Jones:** I would agree with that.

**Andrew Coleman:** I would agree.

**Q100 Mrs Glendon:** How likely is it that there is a need for an Nationally Significant Infrastructure Project (NSIP) facility for the recycling of lithium batteries in the near future, based on the popularity of hybrid and battery-powered vehicles?

**Ed Mitchell:** I think I will pass on to Gill on that one. At the minute, lithium batteries are, as I understand it, not classified as hazardous waste, so outside the scope of this. However, there may be changes in those classifications.

**Gill Ross-Jones:** That is right. At the moment, they are not classified as hazardous waste and so they would not fall under this particular NPS. It could be, with the changes that are happening with the European Waste List and the classification, in the future they may become hazardous, but obviously we cannot predict exactly what will happen in the future.

**Ed Mitchell:** One of the things I would just add is that, in commenting on some of the previous NPSs, we have made the comment that suggesting an appropriate review time scale would be a good thing. I think some of the other ones were more open-ended. This one is very clear that it considers about five years to be the right time. That reflects the fact that technologies, demand and production of hazardous waste does vary, so it gives the opportunity for something like that to be incorporated at a future revision.

**Q101 Mrs Glendon:** So if there is an increased volume of these batteries over the next few years—perhaps in a way of having to have it classified—it is not something that would need to be looked at immediately but just monitored until such a time?

**Ed Mitchell:** Yes, at the moment, because they would not be classified as hazardous waste. I think there is a need for recycling facilities, but they would not be covered by the NPS because they are not classified as hazardous waste at the minute. If that classification

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changes, then I think we would need to revisit the scale of the need and how it fits within the NPS.

**Q102 Mrs Glindon:** Should applications for renewal of planning permission for facilities over the NSIP threshold be dealt with by the IPC or the local planning authority?

**Ed Mitchell:** The Government's policy intent on this is fairly clear, which is that they do not think that extensions of the time limit, for instance, under the planning system should be caught by this. We are part of Government, so I share that view in terms of that policy steer.

**Andrew Coleman:** I do not have anything to add to that. It is quite clear from the thresholds in the Planning Act, not just for hazardous waste but for the other types of nationally significant infrastructure project, that their aims are construction of new facilities or physical extensions to existing facilities, not to the renewal of permissions.

**Ed Mitchell:** The only thing that I would add is there is a possibility of a bit of a legal debate about whether a renewal of a time period counts as a new application or not. One thing I think we might talk to colleagues in Government about is just being very clear about the policy intent, so that this is not resolved through case law but is clear on the face of the NPS.

**Q103 Mrs Glindon:** The removal of any ambiguity so it is very clear. Thank you. Is the NPS clear about the circumstances in which a facility dealing with both hazardous and non-hazardous waste meets the threshold for an NSIP? Should it be the total volume of waste treated that determines whether the facility meets the threshold or only that proportion of waste that is hazardous?

**Ed Mitchell:** I am going to look to my expert advisors on that one.

**Gill Ross-Jones:** Are you asking about a facility that takes in hazardous waste and non-hazardous waste separately, or are you talking about a quantity of hazardous waste totally that might have a slight non-hazardous facet to it?

**Q104 Mrs Glindon:** It is looking at one taking in both, I would imagine, from the information that we are trying to find out about this.

**Gill Ross-Jones:** I think the NPS is quite clear it is concerned with the hazardous waste taken into the facility.

**Q105 Chair:** You think it is quite clear the way it is drafted?

**Gill Ross-Jones:** Yes.

**Q106 Mrs Glindon:** For example, how would that work in a ship-recycling facility? How would it apply?

**Gill Ross-Jones:** It is my understanding that the ship is classified as hazardous waste, so it is quite clear about the whole ship being hazardous waste.

**Q107 Chair:** That is helpful. Mr Mitchell, could I just take you back to something you said about whether a detailed assessment is being made regarding

hazardous waste landfill and that after a period of time they come up for future planning permission? Are you aware of whether any detailed assessment has been made of whether those hazardous waste landfill sites whose planning permission will lapse in the next five years will be unlikely to seek or to be granted a renewal of planning position? Do you have any such knowledge?

**Ed Mitchell:** No, I have no specific information on that, but I guess that will be a commercial decision for the operator and owner of the landfill. Clearly, it is a possibility that one or more of them will choose not to.

**Q108 Chair:** I think we will come back to this later, but could I just ask what the implications are for the NPS of the national policy planning framework?

**Ed Mitchell:** I am not sure there are particularly significant implications. They are sort of separate.

**Andrew Coleman:** Yes, the draft national planning policy framework does not contain policies about waste in it.

**Q109 Chair:** But it does in the sense that we just heard from the previous witness as regards to building in a flood plain. If I have understood it correctly, my understanding is PPS 25 will go. So is this something we should be looking at as part of this piece of work? I am representing an area that is very prone to flooding and a little bit of coast, and colleagues will be in similar positions. This is our opportunity to look at this.

**Ed Mitchell:** We have been involved in advising the Department for Communities and Local Government on their draft national planning policy framework and are satisfied the parts of the existing planning policy documentation around flooding are adequately represented in the new slimmed-down version. The sequential test that was mentioned earlier, for instance, lives on in the new planning framework and is in here. There are parallels between the two processes, but nothing that we are particularly concerned about in that respect.

**Q110 Chair:** This is a personal view: would it not be better not to build these facilities on land prone to significant flood risk?

**Ed Mitchell:** As I remember, it is very clear that you should not build these facilities in the active parts of the flood plain because it takes up space that otherwise is required for water. We then have this reasonably well-established process of the sequential test, which is by preference you should build facilities outside of the flood plain completely. If that is not possible then you look in flood zone 1, which is the lowest flood risk, and so on until you get to flood zone 3. If you get to flood zone 3, then you have to apply what is called the exception test, which is a further hurdle you have to overcome to make the case for building such a facility in the flood plain. The obvious exception is ship recycling, and I think that is dealt with specifically in the NPS, in that obviously a number of those will be in areas liable to flood from coast.

I do disagree with the previous witness, though, in terms of that test. I think that test has shown itself to

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be pretty good over time. We track the number of planning permissions granted against our advice on floods basis, and it is at an incredibly low level. I think on almost 97% of all planning applications we object to from the flood point of view,<sup>1</sup> that opinion is taken into account and the decision or other outcome is in line with our advice. It is very rare it is not, and I think it is appropriate the local planning authority makes judgments about flood risks versus other things like economic benefits. We are comfortable the sequential test works and it has been shown to do so.

**Andrew Coleman:** The only thing I would add is the policy in the draft National Policy Statement also includes references to the need for hazardous waste facilities to be safe and, if need be, remain operational. So it does contain very similar safeguards to PPS 25 and what the draft National Planning Policy Framework says as well.

**Q111 Chair:** I perhaps ought to know this, but could you just talk me through flood zones 1, 2 and 3 in terms of one in 30, one in 100 or one in 10,000—where we are?

**Andrew Coleman:** Flood zone 1 is land that has less than a one in 1,000 chance of flooding in any one year from tidal or fluvial sources. Flood zone 2 is from the flood zone 1 boundary up to one in 200 for tidal and one in 100 for fluvial. Flood zone 3 is a greater than one in 200 chance for tidal and one in 100 chance for fluvial. Within flood zone 3, we also have a classification of the functional flood plain, which is land needed for the storage or flow of water during regular flood events.<sup>2</sup>

**Chair:** That is very helpful. Thank you.

**Q112 George Eustice:** In your written evidence, you made reference to new technologies, and I think you said that the NPS ought to be made clearer to emphasise support for new technologies. Could you expand a bit on what you meant by that?

**Ed Mitchell:** As I mentioned, I think the whole foundation of European policy and policy in this country around hazardous waste is around the waste hierarchy. Traditionally, an awful lot of hazardous waste, as with all sorts of waste, has ended up in landfill, rather than looking to recycle it, recover it or even not produce it in the first place. Therefore, we are at a fairly early point in the innovation curve around the technologies that will be needed to enable the waste to move up that hierarchy. I think it is important there is enough flexibility in the system here that, as new technologies come along and are economically viable, etc., the NPS ought to be able to deal with that.

**Q113 George Eustice:** Just to press you on that because, obviously, the waste hierarchy is a central element and that is there. I presume the Government is arguing, given that it is early and you do not know

what technologies might emerge in five or 10 years, to be prescriptive about saying we should pick a winner and say, “That’s the technology,” would diminish the NPS rather than enhance it. Is that right?

**Ed Mitchell:** Yes, the NPS is quite clear on that point about not picking winners. There is text in there about it not being a good role of Government to do that—that it is the industry that has the knowledge, the expertise and the commercial awareness, so they are better placed to develop new technologies. As I say, the process then needs to be able to accommodate those new technologies as they emerge.

**Q114 George Eustice:** Just coming back to the NPS and the tangible document, what kind of wording would you like to have seen added that, to use your words, could emphasise the support for new technologies that goes over and above the hierarchy?

**Ed Mitchell:** I will check whether Gill has anything to add on this, but I think it would just be to reflect this thing about where we are in the innovation cycle and, therefore, that innovation is both needed and likely.

**Gill Ross-Jones:** Yes, I think the words are all there, but they need bringing forward and it needs to be expressed in a way that says, as Ed has said, we are at the start of this journey and new technologies are bound to come forward, as well as perhaps even new waste types. You never know what new waste is going to turn up if a new product is developed, and it would benefit by having some of the words expressed.

**Q115 George Eustice:** Where in the document would you see that fitting? I suppose what I am struggling with is how you can emphasise support for new technologies when they are still not there.

**Gill Ross-Jones:** Yes, when you do not know what they are, it is difficult to express them. I think the NPS has done a good job of not falling into that trap. Perhaps in the first section it would be useful to say that there will be new technologies coming online.

**Q116 George Eustice:** I want to push you a bit about the point we went through with the previous witness about some of the duplication between environmental permitting and planning. What is your take on that? Do you see a case for integrating them or merging them in some way?

**Ed Mitchell:** My view is that there actually is not much duplication. I absolutely agree there is complexity along the boundary. There is a boundary between environmental permitting and planning, and that boundary is complex but, for instance, to give you a relatively recent example, we had an appeal against the fact that we had not taken transport into account in a permitting decision around a waste facility. That went to the courts. The courts then clarified that was a matter for planning and not for permitting. The boundary, I believe, is clear if complex.

I am not in favour of merging the two systems. As your previous witness said, expertise sits in different places. I am not sure that necessarily means the most effective way of getting at it is to bring it together. This NPS has reflected comments we made on previous ones about the value of early discussion

<sup>1</sup> Note by witness: Where the local planning authority has advised the Environment Agency of the final outcome of the application.

<sup>2</sup> Note by witness: Flood zones do not take climate change or flood defences into account.

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about permitting, because the IPC will not be able to issue a development consent order if they do not think we can permit it. Equally, we cannot issue a permit if we do not think it can be complied with. There is also this thing called the planning bar, so we cannot issue a permit unless planning permission is in place.

There is a complexity to this, but I think on the whole it is up to developers to decide based on commercial risk because in some places the commercial risk will be around the planning permission; in some places, in some circumstances, it will be around the permit. So why spend money on applying for a permit if you are not certain you are going to get planning? You might choose to get planning first or vice versa. When it comes to big infrastructure, the NPS is quite right it is advantageous to parallel track these things so that you are managing the risk of getting one set of permissions and not the other. I do not accept that is a case for completely merging the two systems, because at the smaller end of the spectrum they work well separately.

**Q117 George Eustice:** Coming back to your point about the courts, the courts will interpret whatever laws are thrown their way. The reason they have had to clarify that is that is how the law stands and they have been forced to. Part of your response to that seemed to suggest there was logic in combining, in that they cannot grant planning unless they think you are going to get the environmental permitting, and you cannot grant a permit unless you think they have a good chance of getting planning. It does seem to be part of the same loop.

**Ed Mitchell:** There is a strong interrelation and the two systems touch at many points, but they are looking at separate things and that is the thing I think needs to be clear. We permit or otherwise or set conditions for a specific technology at a specific location. The whole point of the planning system is whether it is appropriate to put that in that place. If you take the waste hierarchy again, there is not much you can do to drive waste up the waste hierarchy through permitting, whereas there is lots you can do through planning because you can say, “No, we do not need any more landfill; we need a recycling facility,” or “There are already 15 recycling facilities for that waste in this area; we do not need another one.” When it comes to permitting we will go, “Does that specific technology in that specific location lead to environmental risk that can be adequately managed for public safety and the environment?” so they do different things.

**Q118 Chair:** May I just interject before we leave that issue? The previous witness questioned whether there were sufficient resources. Presumably, you apply a fee for the issue of a permit.

**Ed Mitchell:** We do; that is right.

**Chair:** So you are resourced to intervene at the time of the permit, but you have to use existing resources for planning.

**Ed Mitchell:** Yes, we use grant-in-aid from Government to fund our input to the planning system. We allocate money to that—I do not want to give the

impression that we have to scabble around for a bit of money to do an individual planning application. We comment on 30,000 or 40,000 planning applications a year. We prioritise those very rigorously, so that we put more effort into commenting on those that we believe have a bigger environmental risk, but we allocate money and resources to that process. We do not get a specific pot of money attached to a specific planning application—that is true—but I think we are able to allocate enough of our grant-in-aid settlement from Government to planning to enable us to intervene in the planning system where we feel it is appropriate.

**Q119 Chair:** And just in tackling this issue of perception that might arise more under the NPS, you do not think there is some advantage in running these two applications together? I have just seen applications where I have had constituents complain, “I think it would have been much simpler if the Environment Agency had been involved at the planning stage rather than at the permitting stage.”

**Ed Mitchell:** Yes, we are a statutory consultee for many planning applications, and certainly any that would happen under this system, so we are involved in the planning stage. I absolutely agree that, especially for contentious developments, there are great advantages in running the two systems side by side. Because they are different skills looking at different aspects, I am not sure of the benefit of joining them together. I completely agree because, for instance, when an incinerator is going through the planning and permitting system, people will feel that they have not got satisfaction through planning and will have another go in permitting, only to find that the issue they wanted dealt with is a planning matter not a permitting matter, and so on. I agree it can be complicated and I think they should be parallel-tracked.

**Andrew Coleman:** Can I add something?

**Ed Mitchell:** Yes, please do.

**Andrew Coleman:** I would just like to add that, with the new system operated by the IPC or its successor body, the big difference between the normal Town and Country Planning Act is the requirement—and it is a requirement—for lots of pre-application consultation. So it is at pre-application stage that some of the issues around the boundaries between planning and permitting should be explored. Developers will be forced to do the pre-application consultation, which is not necessarily the case under the Town and Country Planning Act.

**Ed Mitchell:** And that is positive, I think.

**Q120 George Eustice:** One of the issues that came from the ESA was that perhaps there is a need for better training of staff, both at the IPC and the Environment Agency, so they have a clear understanding of where the boundaries lay and where they overlapped. Is that something you would agree with? Just from the answers we have had, it is clearly a grey area.

**Ed Mitchell:** Absolutely, it is a complex area. Both us and the IPC, and its successor body, can always get better at being clear with people about where those

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boundaries lie. We are thinking about producing some guidance to different sectors of industry on that very area, which I think would probably be helpful.

**Q121 George Eustice:** Finally, on this point, you talk about running the two in parallel. What about the suggestion of doing one before the other, so making sure you get the environmental permits first, so it has been signed off as needed and has all of those in place before it goes to the IPC? There is this problem that the IPC do not always have the expertise they need to do it.

**Ed Mitchell:** When I say parallel, the planning and permitting system touch at different points as they go through the process. The optimum way of phasing them is such that, if we are confident we are going to be able to permit a facility, we can let the IPC know that; they can then issue their development consent order, which means we can then issue the permit. There is a link that goes back and forth between the systems. Because of the time it takes to determine an application, that will often mean we need to start a little bit earlier in our formal processes than the IPC does, but as Andrew says, pre-application discussions can happen very effectively absolutely in parallel.

**Q122 George Eustice:** My final point just comes back to this idea about the terminology in the NPS. The IPC have said comments like “liaise”, “consult”, “seek advice” and “co-operate” are quite vague, woolly comments. Do you think there is a need for tighter definition about some of those things—to what extent do they need to liaise and co-operate?

**Ed Mitchell:** I noted what the previous witness said and the example she gave. On the whole, these are terms that are pretty well understood within the professions, whether it is the planning profession or in our permitting work, so I do not have any particular comments to offer on that.

**Andrew Coleman:** The Planning Act and associated legislation sets out the minimum legal requirements for an applicant, and as long as those are reflected correctly in the NPS, we will be comfortable with that. I did not have the same concerns as the previous witness though.

**Q123 Chair:** In your written evidence you say you are working closely with Defra on the NPS and the appraisal of sustainability (AoS), but it is not clear how that has contributed to the development of the AoS. You have questioned a number of minor positive impacts contained in the appraisal of sustainability. What role did the Environment Agency play in the appraisal process and do you believe that the process has been sufficiently robust?

**Ed Mitchell:** In the development of all the NPSs—not just this one—we have worked pretty closely with our sponsoring Department; it is an ongoing relationship and discussion. We have talked to them several times over the course of its development. I would not want my comments about the minor positives to be taken out of context. The purpose of the AoS is to, at a high level, decide whether this bit of policy is going to contribute to sustainable development or not, or be more positive in terms of sustainable development

than the existing policy framework. Overall, it absolutely meets that requirement. The specific point that we will continue to discuss with Defra is that, because it is a comparison between current policy and what the NPS would do, if you take flood risk, and we have already discussed that much of current policy is simply reflected in NPS, then it is not clear to me why that is positive rather than just neutral, if you see what I mean. The NPS is very clear, though, that many of those judgments are based on professional judgment rather than evidence because of the paucity of evidence, so you are into the realms of whatever that professional judgment is and I understand that Defra used a consultant to develop that. As I say, we will have ongoing conversations with Defra about it, but they are on the margins. I would not want to give the wrong impression on that.

**Q124 Chair:** Thank you. Could I just ask on the resource issue again? Are you convinced there is sufficient incentive for the industry to develop the new infrastructure set out in the NPS?

**Ed Mitchell:** That is a more difficult question for us to answer. It is a very good question and it would be interesting to hear what the industry has to say about it.

**Q125 Chair:** They have expressed a concern that operators may be discouraged from developing if they are undercut by other UK operators and other devolved areas that may be using cheaper, sub-optimum methods. This is what we have heard.

**Ed Mitchell:** Waste legislation is a complex area for us to regulate, and part of the reason for that is it is as much about creating a level playing field for legitimate operators as it is about environmental protection. Waste legislation is a kind of legal construct, so that issue about a level playing field is prevalent throughout waste and the way we regulate it. I do not see anything in the NPS, but I will check with colleagues, that disturbs that balance either way, to be honest.

**Andrew Coleman:** No.

**Q126 Chair:** Are you confident that the Agency itself has sufficient resources to rigorously enforce the forthcoming regulations on the treatment of hazardous waste, both the current and the future regulations? Are you confident you have the resources?

**Ed Mitchell:** Yes. The way we operate is that we charge for the services that we provide.

**Q127 Chair:** On permitting, but not on planning.

**Ed Mitchell:** Yes, but there is a charge that an applicant makes when they apply for a permit and then there is an annual subsistence fee. The annual subsistence fee they pay us funds our compliance and regulatory work. We adjust that on an annual basis, so if for instance a new regulatory regime comes in we have a way of raising money to pay for that resource. We can adjust it on an ongoing basis, so I am comfortable that we will be able to deal with what comes up.

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**Q128 Chair:** Just finally, when the IPC is abolished, the decisions on hazardous waste nationally significant infrastructure projects will be taken by Ministers in a different Department—Communities and Local Government. Are you concerned that policy decisions made by Defra will be implemented by Ministers in another Department? Does that pose any concerns at all?

**Ed Mitchell:** No, it is a return to the previous system in that respect, and I think Defra will be able to make

its policy views known to the relevant Secretary of State in making their decisions. I do not have a particular concern about that.

**Q129 Chair:** Thank you. There is nothing else you would like to add?

**Ed Mitchell:** Not from me, no.

**Chair:** We thank you very much indeed. We apologise for the delay, but we are very much grateful to you for participating. Thank you very much indeed.

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## Tuesday 11 October 2011

Members present:

Miss Anne McIntosh (Chair)

Thomas Docherty  
George Eustice  
Barry Gardiner  
Mrs Mary Glendon

Neil Parish  
Dan Rogerson  
Amber Rudd

### Examination of Witnesses

*Witnesses:* **Lord Taylor of Holbeach, CBE**, Parliamentary Under Secretary of State, Department for Environment, Food and Rural Affairs, **Sabine Mosner**, Deputy Director Waste Strategy and Regulation, **Andy Howarth**, Head of Hazardous and International Waste, and **Alison Gadsby**, Senior Hazardous Waste Policy Adviser, gave evidence.

**Q130 Chair:** Good morning and welcome. My Lord Taylor, first of all may I congratulate you on your appointment and the move to Defra, which I know is a subject very close to your heart? Thank you very much for being with us today participating in our inquiry on hazardous waste and the National Policy Statement inquiry. For the record, may I ask you to introduce your team?

**Lord Taylor:** I will be delighted to. Sabine Mosner is Deputy Director of Waste Strategy and Regulation, Andy Howarth is Head of Hazardous and International Waste and Alison Gadsby is the Senior Hazardous Waste Policy Adviser. May I say that I am very pleased to be here? This is the first time I have been before such a Committee, so hesitancy and uncertainty, I hope, will be forgiven while I find my feet.

**Chair:** We will try and be gentle with you. We are very grateful for you being here so early. I would like to ask Thomas Docherty to start.

**Q131 Thomas Docherty:** Thank you, Madam Chair. Congratulations, Lord Taylor, on your new post. What evidence has been used to establish the needs case as set out in the National Planning Statement?

**Lord Taylor:** The needs case has been assessed: it is part of the National Policy Statement. The purpose of the new powers under the Planning Act is to provide for strategic sites. As an example, while 160,000 tonnes of waste oil are suitable for regeneration, there is currently just one plant, which is capable of recycling 50,000 tonnes per annum. The NPS has identified this as an area where we think there is further need in the UK to deal with it.

**Q132 Thomas Docherty:** I do not know if you have seen the evidence we took from the industry prior to today. One concern raised with us was that the last assessment of the existing capacity was carried out in 2008; I think that I am right in saying that—apologies if I am wrong. Is that correct or has Defra done an assessment since then? If that is correct, are you satisfied that is a recent enough review to furnish you with the correct information?

**Lord Taylor:** No, it is not sufficient to use as the database we would like to use in the publication of the final document. The document is currently out for consultation, and the 2008 data was the only reliable

data on which we had to build. There is going to be data available from 2010, and we will be incorporating that into the Needs Statement, which will form part of the final document. We hope to be more up to speed, and indeed the policy itself will be revised in 2015. We see this as a continuing process, just providing some fixed points about which the need can be assessed.

**Q133 Thomas Docherty:** I am grateful for that answer. When preparing the NPS there has been an assumption that not all the current sites would seek to have their current licences renewed or extended. Has the Department done any detailed analysis of individual sites in order to reach that conclusion?

**Lord Taylor:** Not that I know of, but I will ask if any of my colleagues are able to refute that.

**Andy Howarth:** Linking back to your earlier question, Defra produced a summary of needs in 2010, in the Strategy for Hazardous Waste Management for England, which is a document available on Defra's website. In putting that needs case together, we discussed with industry, in stakeholder engagement directly, the sorts of needs that they thought were in place. In some cases the industry will have used their own facilities as examples of where they think there is either a need or there is sufficient capacity existing. In terms of looking at individual facilities—for example, in ship recycling—it would be to understand what already exists, and then weighing up the need based on that.

**Q134 Amber Rudd:** Will applications to renew planning permission for existing facilities that are over the Planning Act thresholds be determined under the NPS procedure?

**Lord Taylor:** Yes. The current thresholds as defined will be 30,000 tonnes for conventional hazardous waste and 100,000 tonnes for landfill.

**Sabine Mosner:** In relation to extensions of existing facilities, the NPS only applies if the increase in that capacity is a further 30,000 or 100,000. However, there is a facility under the Planning Act for an extension below the NPS level to be considered under the NPS.

**Q135 Amber Rudd:** I have not quite got that last point.

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**Sabine Mosner:** If you want to extend a planned facility by 20,000 tonnes, in principle that would be taken under the Town and Planning Act, because it does not meet the 30,000 tonne threshold. There is an option in the Planning Act that would enable Ministers to decide that it should be considered under the NPS processes if it was considered sufficiently significant.

**Q136 Amber Rudd:** Do you think the NPS is clear enough on that?

**Lord Taylor:** In the sense that the answer we have given is complex and quite nuanced, we could consider looking at that and making it more explicit if you feel the current wording is not clear. We all know the Town and Country Planning Act procedure is a bit long winded and does not necessarily fit the case we are trying to present under these proposals in every circumstance. Where facilities have a strategic purpose, we are hopeful that we can use the Planning Act as the mechanism for speeding up the process. As Sabine made clear, this is certainly what we want to do where it is expanding an existing site.

**Q137 Neil Parish:** Good morning Lord Taylor, and welcome to your new ministerial role. In terms of new technologies, we are moving in a very fast world. Do you think the NPS should more clearly emphasise the role of emerging technology in regards to hazardous waste management and being able to seek planning permission if it is a new technology? We are moving in a much faster world than before.

**Lord Taylor:** Yes. The schedule of what consists of hazardous waste is associated with the EU directive.

**Q138 Neil Parish:** We will talk about that in a minute.

**Lord Taylor:** It is not a UK Government definition. Undoubtedly products and technologies are being developed all the time, and that is very important. There is flexibility built into the system, so there should be no delay. If we, as a Government, are persuaded that something is hazardous and ought to come under these arrangements, we would not hesitate to make representations to add it to the schedule.

**Q139 Neil Parish:** Can I press you on the flexibility? Government and planning authorities are not noted for their flexibility. How would it work? Suppose that I am a company and I have come up with a new system of recycling a particular waste that is very innovative, but it is new. How are you going to deal with that?

**Lord Taylor:** I see. You are thinking of the actual processing?

**Neil Parish:** Yes.

**Lord Taylor:** I was answering, in effect, about the arrangements.

**Sabine Mosner:** The NPS is technology-neutral. The Needs Statement is based on the forecasts of hazardous waste arising that we need to process. It is neutral as to the technology best capable of doing that, as long as it pushes the processing of that waste up the waste hierarchy. That leaves it open for developers to come forward with whatever new technology they might want to use. As the Minister said, it is not

neutral in relation to the hazardous waste arising, because that is part of the process of establishing needs.

**Q140 Neil Parish:** If it is a smallish application, as often new technologies are, it will not necessarily be dealt with by Government but by a planning authority. How can you influence a planning authority? Often they say no, because that is the way they are.

**Lord Taylor:** It is actually not part of the process that Government should seek to influence the planning policy.

**Q141 Neil Parish:** It is all localism, is it?

**Lord Taylor:** Indeed. You are on message, if I may say so, Mr Parish.

**Neil Parish:** Almost, yes.

**Lord Taylor:** The key element is that there is nothing to stop new technology being used in an existing facility, and I suspect that is where new technologies will probably be housed. All waste, whether hazardous or not, should be seen as a resource rather than as a problem. It is, of course, a problem, but by moving it up the waste hierarchy we increase its value and provide an economic incentive for people to develop new technologies by making that process as efficient as possible and moving it as far up the hierarchy as possible.

**Q142 Dan Rogerson:** If I cast my mind back to the passage of the 2008 Planning Act, although the two parties now in coalition, then in opposition, had some concerns about some aspects of it, one of the things we were all in agreement with was that we wanted a process where as many of these overarching questions as possible could be settled in the NPS, so that what we were looking at were specific local issues around the facility. This issue of technology is an interesting one. If the NPS does not make any judgment as to what the technology is, might it be possible for those who were opposed to the facility to oppose it on the grounds of the technology being dangerous, untried and untested? We are then back to square one: multiple court cases, appeals, and inquiries, which the NPS was supposed to get us away from.

**Lord Taylor:** The whole process is designed to reinforce the waste hierarchical upward movement. I do not say that this is going to be friction-free; I do not think anyone could say that the development of hazardous waste facilities in the UK is going to be friction-free. However, under the Planning Act the powers vested in the Infrastructure Planning Commission are being abolished as part of the Coalition Government's programme. The Secretary of State for Communities and Local Government will be the responsible person taking decisions under the Planning Act in respect of this, and many other similar processes.

**Q143 Neil Parish:** Lord Taylor, you referred to Europe and the fact that Europe has its sticky little fingers over the Waste List, and is increasing the number of substances that are going on this Waste List all the time, because of the so-called precautionary

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principle. Is this desirable for businesses or is it just adding another burden?

**Lord Taylor:** I have my own views on the precautionary principle as applied to a whole range of activities. It certainly has its deficiencies. The place for that argument is in Europe itself, and winning that argument is part of the strategy the Coalition is determined to get over. It is not in our interest to inflict unnecessary burdens on industry or on the waste recycling industry as a whole.

**Q144 Neil Parish:** It is about getting the balance right between safety and what is necessary to recycle.

**Lord Taylor:** It is hazard and risk; it is that argument you will find popping up under all sorts of heads. Quite a lot of things are hazardous, but the question is what risks are involved.

**Q145 Neil Parish:** Lithium batteries may be required to be dealt with as a hazardous waste during the lifetime of the NPS. Have you made assessments of the possibilities and how to deal with that?

**Alison Gadsby:** Lithium batteries, as you have just suggested, are not currently defined as hazardous, but the review in Europe may make them hazardous; we do not yet know. We cannot make provision for them in the NPS, because the NPS is based on hazardous waste as defined in the Hazardous Waste Regulations 2005, and lithium batteries are not yet hazardous waste. However, there is scope for flexibility, and we are exploring the possibility whereby we can put some wording in the NPS to show it is possible that applications for other waste streams not covered by the NPS may appear in due course, and these would have to be considered on a case-by-case basis.

**Q146 Neil Parish:** It fits in with my first question about emerging technologies: if the lithium can be recovered through a process, surely we should be encouraging that. I do not see much encouragement going on.

**Lord Taylor:** I hope the opportunity to recover any particularly useful materials is incentivised by moving materials up the waste hierarchy. It does not matter how it is dealt with; there is an incentive for people to handle these things. The fact that a site is used for hazardous waste does not mean to say that something not currently identified as being hazardous cannot be processed at that site. There is more flexibility to allow for technology than perhaps—

**Q147 Neil Parish:** At existing sites, probably, yes.

**Lord Taylor:** Yes, at existing sites. If one is looking at lithium batteries, to get up to the 30,000 tonne threshold you would be looking at an awful lot of batteries. Realistically, it is more likely to be a bolt-on to an existing facility, unless it is a Town and Country Planning Act-type application, which is also possible. There is a belt and braces type of opportunity here. The NPS is there to provide a framework that is certain for the industry and certain for the operators in that industry in knowing how they will fit in to the Government's strategy. Within that, we are confident that the industry itself will respond to new needs, and

I do not think that is an unreasonable expectation, given their past record.

**Q148 Thomas Docherty:** Lord Taylor, you will be familiar with the disagreement between some of the bodies about the timing of applications for permits. While the NPS recommends that it would be appropriate to submit for environment permits at the same time as development rights, the IPC suggests that in some cases it might be appropriate to do that earlier, particularly if there are pollution concerns. Do you agree with the IPC that that approach should be adopted?

**Lord Taylor:** Our general view is that the planning and the environmental permitting systems have different objectives. They are two parallel processes, but they are not synchronous. Our general view is they should be kept separate.

**Q149 Thomas Docherty:** In terms of the timing, do you think there is merit in the IPC's suggestion that, where there are particular environmental issues, prior submission to the regulator would be appropriate before applying for developmental permits?

**Lord Taylor:** It may be. The objective of the environmental permitting system is to protect human health and the environment by controlling emissions and discharges through the lifetime of a facility. However, it does not consider the wider impacts involved, and, given the different objectives, it is entirely reasonable that they should be kept separate. As far as the timing is concerned, you make a point that is worth us considering.

**Q150 George Eustice:** The IPC in their evidence have raised an issue about some of the terminology used in the document, in particular the lack of consistency—for example, in using terms such as “liaise”, “consult”, “seek advice” and “co-operate”. Do you think there is a good reason for using different terminology or should it be standardised so it is clear what their relationship with other agencies, like the Environment Agency, should be?

**Lord Taylor:** I suppose there are nuances with these words. However they are used, the semiotics of meaning is quite interesting: what is the difference between a consultation and a liaison? We will look at these sorts of comments. The whole point of the document is to try to be as unambiguous as possible, so we will try to ensure the language reflects that.

**Q151 Chair:** In terms of educating the public about the environmental benefits of hazardous waste infrastructure and improving public perceptions, what steps are you taking to reach that goal?

**Lord Taylor:** A very important aspect of any planning is to try to reassure the public about the safety of the facilities, the purpose, and that factors such as access and traffic have been taken into account. I would expect all applications that come forward under these provisions to take those into account, because reassuring people is a very necessary part of getting a buy-in to the process.

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**Q152 Chair:** Do you not think that by raising it as an issue you are going to increase anxiety? As a constituency MP, whenever there is an application from a developer for an energy-from-waste plant, before you even cross hazardous waste there is a public perception in the UK that we do not accept them. That is widely different in other countries, like Scandinavia, Austria and Germany, where they realise there are benefits to energy from waste, or hazardous waste. My concern is that, by requesting that the developers raise this issue, you are going to put the community against the project. Is there a role for Government to go out and say why we need hazardous waste plants?

**Lord Taylor:** Indeed. If you take the role of someone like me, it must be that this needs emphasising. I am not in favour of this sort of development being achieved under the radar; that is not good public policy. Good public policy is achieved by being transparent and open, and demanding we can be satisfied that there is no risk. We need this documented and evidenced before the Secretary of State is able to approve such a facility. There is no method that fits with the Government's current agenda that could force such developments on local communities.

We all know about the problems of nimbyism. We can see it in a whole range of activities. Even in the Localism Bill, which I was helping on before I got this lofty promotion, we see this is an underlying problem of British politics. It is often about being patient, and building people's confidence. The fact that we have the words "hazardous waste" on this document makes most people prick up their ears, and say, "This must be dangerous." We have to get over that.

**Q153 Chair:** Could you explain to the Committee the processes that a developer has to go through to assess community anxiety and stress, and how that process will be managed?

**Lord Taylor:** Prospective developments have to address the anxiety and stress by providing clarity about the technologies they will be using, and how any potential risks will be managed. This aspect of health and reassuring is built into the NPS. We need to know that the applicants have taken this factor into account, and it will form part of their submission.

**Q154 Chair:** In Paragraph 4.10 it says, "Where relevant, applicants should carry out an assessment of community anxiety and stress," but it does not set out what the process should be.

**Lord Taylor:** We were of the view that it was not necessary to have a rigid format for doing this. If we receive a considerable amount of opinion to the contrary, we will look at this in the light of the consultation process and see if a more formalistic process is desirable. The nature of these applications is that they are going to be slightly different: a landfill site taking building rubble with asbestos is going to be different from something involving chemicals, which people might be more on alert about, because it is less familiar. The less familiar people are with things, the more anxious they are.

**Q155 Chair:** If the developer were to approach the parish council at the earliest possible stage, would that satisfy the Department?

**Lord Taylor:** It would not satisfy the Department in the sense that it is not the only thing they need to do, but it would be a very wise strategy.

**Q156 Chair:** This is one of those areas where there seems to be a bit of ambiguity for both the developer and the community. The process could be clarified.

**Lord Taylor:** There are two schools of thought about that. There is a school of thought that says you should lay everything down, so that everybody knows and can start at the beginning and come out at the end. On the other hand, there is a recognition that circumstances are different, locations are different, and perhaps the process is best left to the judgment of the individual applicant and the community. What is key is that a dialogue is going to be necessary, and how that takes place, whether it takes the form of a consultation or a liaison—if I may use our previous discussion—is a matter for them.

**Q157 Chair:** Are you satisfied that the current level of ambiguity is more likely to give rise to a legal challenge?

**Lord Taylor:** I do not think so. A legal challenge can occur at any time; a successful legal challenge is what I think you, Madam Chair, are more concerned about. A successful legal challenge would have to show that the process did not allow proper process. You do not need to define the proper process to observe whether the requirements of the NPS have been taken into account, which is that the issues involving public anxiety and health have been properly addressed by whatever process has been used.

**Q158 Dan Rogerson:** On the subject of providing as much information as possible, there are a couple of things that applicants have been asked to carry out as part of the application process, and we have had evidence to say that they are concerned about the lack of detail about how that should be done. That includes whole-life costing, and the measurement that ties into community anxiety and stress assessments. That is quite a variable thing. It is not dissimilar to what you have just been saying, but there are particular concerns around those two areas.

**Lord Taylor:** I put a point of view in response to Madam Chair's question to me, which was putting the other side of the argument, because I feel it needs to be presented, and it shows you where we were when we wrote the document. As I said earlier, we are prepared to look at this in light of consultation if there is a feeling that perhaps it ought to be more structured. I cannot emphasise enough that there is an alternative way of looking at it that provides for a more suitable process, depending on the proposal concerned, its location, and the nature of the hazardous waste facility.

**Q159 Chair:** Do you have any evidence in the Department that there has been a delay in some of the applications coming forward until the NPS is in place?

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**Lord Taylor:** We do have a particular anxiety expressed by one applicant, who is in the process of going through a Town and Country Planning Act application and now faces the prospect of having to reapply under the Planning Act process. We are aware of that and seeing if there is a way of dealing with that in this phase of changeover. I just put that on the record. I do not know that there is any backlog of people waiting for the whistle to blow. There is no evidence available to us.

**Q160 Chair:** Do you think there is a possibility that developers may submit applications for larger facilities than they would otherwise have thought of, just to bring the applications within the Planning Act?

**Lord Taylor:** That is not impossible. If somebody applies for a 30,000 tonne facility, they do not necessarily have to reach that capacity immediately. The risk comes if they seek to renew and they have not reached their target, in which case they might not get that renewed. We assume there will be some dynamics in this process—that people will be allowing for some growth in their enterprise as part of the development. We do not expect this to be a significant issue, but we will keep ourselves alert to this situation should it emerge as a problem.

**Q161 Chair:** Is there any evidence at all of any cross-border implications? With the streamlined procedure under this applying only in England, will developers gravitate towards sites in England rather than the devolved Administrations?

**Lord Taylor:** Currently 80% of the sites are in England. It is a pretty England-based facility extending across the whole of the UK. We do not see this process changing particularly as a result of this proposal.

**Q162 Chair:** What do you believe the average cost of preparing an application under these new procedures would be?

**Lord Taylor:** I cannot say; I do not know if any of my team can.

**Sabine Mosner:** We have something, don't we, Alison?

**Alison Gadsby:** We do have some figures. They are indicative figures provided by industry and we are not totally sure what they include. They are the development costs, but I do not know whether they include the planning fees or not. We have an example of a soil treatment centre where we have been given an indicative cost of £2.5 million. A stabilisation and solidification centre, which is also soil, would be a little less, at £1 million to £2 million. The most expensive one we were given was landfill, which could go up to £12 million.

**Sabine Mosner:** Those are the figures for the facilities—

**Alison Gadsby:** Yes, the facilities.

**Sabine Mosner:**—not for taking them through the process?

**Alison Gadsby:** We do not think so, no. They are some indicative figures that we were given by industry for the development, but they did not provide a breakdown of what was included in them.

**Q163 Chair:** If industry put to you that the average cost of preparing an application was six to 16 times more than the other procedures, would you accept that as an accurate figure? Is that the level of cost that we are talking about to get a streamlined decision?

**Lord Taylor:** I cannot judge that. It would seem to me highly unlikely. One of the biggest cost elements of a Town and Country Planning application must be the time delay alone, and this is a much more streamlined process. It may be demanding, but where we are dealing with facilities of this size you would expect people to be prepared to justify their application properly by providing the Secretary of State with the necessary evidence. I cannot judge the figures.

**Q164 Chair:** If you have any comparative figures between the current costs and projected costs of the new planning procedure, it would be helpful to have that in writing.

**Lord Taylor:** It might be quite difficult to assess, I have to say.

**Q165 Chair:** It does seem quite substantially proportionately higher.

**Lord Taylor:** We will see what we can provide, but we would be dependent on input from industry. We have no details ourselves.

**Q166 Chair:** What is the status of the NPS to the National Planning Policy Framework?

**Lord Taylor:** The National Planning Policy Framework does not include hazardous waste, because it a separate operation we feel we need to keep discrete. They are compatible; we hope that there is no disharmony between the objectives of the NPPF and the NPS that we are considering today. They both have this rather controversial presumption in favour of sustainable development at their core. The NPPF sets out Government planning policy in the context of the Town and Country Planning regime, whereas the NPS for waste is part of a strategic planning process built on the Planning Act 2008.

**Q167 Chair:** Will Planning Policy Statement 25 apply to the new procedures?

**Lord Taylor:** Could someone help me on that?

**Sabine Mosner:** Yes. The way I would explain it—and I would look to my colleagues to correct me if necessary—is that the NPS is designed to substitute for the normal Town and Country Planning, and therefore statements like PPS 25 or PPS 10, because it is a different system. However, it is entirely consistent, as the Minister said, with the tests applied in Town and Country Planning. PPS 25 addresses flooding, where the definitions are very close and run parallel, and presumes against development in the highest-risk areas, but allows, under certain circumstances, an exceptional development of facilities where that might be necessary. That would be governed not by PPS 25 but by what you see in the NPS.

**Q168 Chair:** Do you think it is acceptable, given the potential environmental and health risks that will be posed by the flooding of a hazardous waste treatment

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facility, that such facilities could be approved in areas where there is a greater than 1-in-100 risk of flooding in any one year?

**Lord Taylor:** There was a lot of discussion about development on flood plains, and we have moved on from the early phase of that argument to acknowledge that some development on flood plains is necessary. The key thing is the process of flood protection and the fact that the site is adapted in such a way as to mitigate the risks that might arise from flooding. We have the classic example of what to do about ship breaking, which is by definition maritime and prone to flooding, but the key thing is that the application needs to acknowledge that and show satisfactorily to the Secretary of State that the risks that arise from such things as flooding are taken into account by the developer. That is a reasonable position to take on all these issues.

**Q169 Chair:** Is there a case for ruling out any development of hazardous waste facilities in an area with a flood risk higher than Zone 1?

**Lord Taylor:** I would not say so, for the reasons that I have suggested. Often the most suitable sites may well be in areas that, in general geography, might be prone to flooding, but where strategic transport or reuse of brownfield sites may be adapted to provide a risk-free environment for the development of these facilities. I would not be as categorical as you have been, Madam Chairman, in saying that it could never take place in such areas.

**Q170 Barry Gardiner:** Minister, you are trying to sound very reasonable in all this.

**Lord Taylor:** I am a very reasonable man.

**Q171 Barry Gardiner:** Of course you are, but you are leaving this open-ended and the Committee would like to tie you down a bit more. You said, "It may be a suitable site; we do not want to block this off, and the debate has moved on." What would give us a lot more confidence in what you are saying is if you were to give us some examples of the sort of mitigation profile that developers would have to incorporate to give the public, and you as the Department, assurances that, given a flood event, we were not going to see real damage caused to the environment and to people's well-being and livelihoods in the surrounding areas. Can you give us those specific additional protections that might be included?

**Lord Taylor:** I am not an engineer, but I am a fenman, so I am well aware of what you have to do to try to keep water managed, and we are talking about water in this heading. One of the most frequently used systems is bunding to physically impede the entry of water. A second important facility is to ensure that any egress from the site itself is properly protected, so that any structure that allows flood water to come in is dealt with. In many ways, you only have to go along the river here to see what has been developed in housing, on the south bank of the river in particular, around Rotherhithe where houses are on stilts, in the sense that they have got garages underneath. One of the things about flood management is to build the

structure so that it incorporates these features as a matter of routine.

The only reason why it is worth arguing this case is that it is important to remember that there may well be certain circumstances where these facilities are best situated with marine or river access. It is important that we should not rule out a low-lying site just because of this reason. Adapting and militating against floods is something we are going to have to live with in relation to a lot of other facilities.

**Q172 Barry Gardiner:** The Committee would not wish you to rule out anything that was potentially a suitable site; that is not the intent here. The intent is to ask, given that you have just suggested eminently sensible mitigation and protection solutions, what steps will you and your Department be taking to ensure that those are conditions of development going ahead, that they are stated up front to be so, and that they are not just the sort of things you might be looking for, but could potentially be overlooked?

**Lord Taylor:** In the Statement, at 5.7.16, there is a whole chapter under mitigation, which I think the Committee would find useful. The whole of 5.7 is about this particular area, and I would like to draw that to the Committee's attention.

**Q173 Chair:** We are asking you the questions because we do not believe they are sufficiently clear to give the protection. For example, would you be prepared to distinguish within the NPS an approach being taken to flood risks by infrastructure type? You mentioned earlier there are many types of hazardous risks, and it is how we manage the hazard.

**Lord Taylor:** Yes. Perhaps this reinforces what I have been saying: the whole purpose of the session today is for the Committee to express its view and we are here to listen to it. It is probably useful for me to explain where the Government is currently, part way through the consultation process, which ends on 20 October. We currently think there are sufficient safeguards in the NPS to balance the flood risk with the need for any developments. As it states in the NPS, "Applications for hazardous waste projects of 1 hectare or greater in Flood Zone 1 and all proposals for hazardous waste projects located in Flood Zones 2 and 3 should be accompanied by a flood risk assessment (FRA). A FRA will also be required where a hazardous waste project [is] less than 1 hectare".

**Q174 Chair:** We have that. If the Environment Agency asked you to rule out a particular development, would you do so?

**Lord Taylor:** We would have to bear in mind the advice we received from the Environment Agency. We would have to have a very good reason for seeking to override that, but that is for the Secretary of State to decide. Ultimately, decisions on these matters are political decisions taken by an accountable Minister.

**Q175 Barry Gardiner:** You have focused our attention—helpfully, thank you—on page 45, Clause 5.7.16. Is it not just a statement of the blindingly obvious? Is it not just a statement of fact? It says, "To satisfactorily manage flood risk, arrangements are

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required to manage surface water and the impact of the natural water cycle on people and property.” Yes, of course they are, but the point that we would like to get from you is some clarity about intention and about conditionality. It is about ensuring that there are more stringent conditions around this matter—as contained in the previous page on assessment of applications—such that no application would be granted unless there were clear, mitigating measures such as that incorporated. It is putting it from a statement of the blindingly obvious to a statement of conditionality that an application will not be approved unless they have dealt with those issues.

**Lord Taylor:** I can reassure you on that point. The Secretary of State will need to be satisfied of that. I hope you are not regretting finding common sense in this document, because it is built on common sense. If common sense is blindingly obvious, we do not mind restating it occasionally, because it is the foundation of the process. It will be up to the Secretary of State to be satisfied that these factors have been properly taken into account. He will act on the advice of the Environment Agency and of my Department on this matter, but ultimately the Secretary of State has to make a decision.

Earlier I started talking about bunds and sumps. The NPS is not the place to be putting those; it is for the engineers making the submission to be able to build those into the application so that it meets the requirements.

**Q176 Barry Gardiner:** And it is a requirement?

**Lord Taylor:** Yes.

**Q177 Barry Gardiner:** The only point of dispute between us is whether it is at present a requirement. If it is, and you have just told the Committee it is, then we would all be happy.

**Lord Taylor:** Yes, it is in here under the IPC decision-making on page 44. It says, “The IPC should be satisfied that where relevant”, and then it goes on to catalogue them.

**Q178 Chair:** The IPC will not be there.

**Lord Taylor:** No, but the Secretary of State is in effect taking on those functions. That is the succession in practice; for IPC read “post-IPC, Secretary of State”. In flood risk areas the project is appropriately flood resilient, according to the paragraph.

**Q179 Barry Gardiner:** It does not say that, does it?

**Lord Taylor:** It does.

**Q180 Barry Gardiner:** No. It says, “The proposal is in line with any relevant national and local flood risk management strategy.”

**Lord Taylor:** If, Mr Gardiner, you could look at page 44.

**Q181 Barry Gardiner:** I am.

**Lord Taylor:** At the bottom of the bottom column it says, “In flood risk areas,” and we have defined those as 1, 2, and 3, “There is appropriate flood resilience and resistance, including safe access and escape routes where required, and that any residual risk can be

safely managed over the lifetime of the development.” I think that is pretty specific.

**Q182 Barry Gardiner:** I am happy.

**Lord Taylor:** Yes, so am I having found that.

**Barry Gardiner:** It took a long time to get there, but I am happy!

**Q183 Neil Parish:** I very glad to see Mr Gardiner is happy. That has made me much happier. Minister, insects and insect infestation: normally hazardous waste does not attract insects, for obvious reasons; they probably do not live too long after being attracted by it. Why has insect infestation been included in the generic impact section of the NPS? Is it a belt and braces process? Do you know?

**Lord Taylor:** No, I do not know. I will ask somebody who does.

**Alison Gadsby:** It is a belt and braces approach. It is in there as it would be for other planning applications.

**Q184 Neil Parish:** Is it the idea that the insects, if they did survive the hazardous waste, could then spread it? What is the logic behind this?

**Alison Gadsby:** Just that it might be a nuisance, I guess, if there were insects at the site.

**Lord Taylor:** When people see waste, they think of insects. They think of rubbish, rats, mice, and flies and those sorts of things. Some satisfactory consideration of this aspect might be considered wise.

**Q185 Thomas Docherty:** The Prime Minister has placed great emphasis on reducing regulation and bureaucracy as part of the Government’s drive. Is this an example where you may wish to go back and see if it is really necessary, because it sounds as if there is some ambiguity as to whether or not this is needed?

**Lord Taylor:** The question of the insects?

**Q186 Thomas Docherty:** Yes.

**Lord Taylor:** Page 41 lists dust, odour, artificial light, light pollution of the site, smoke, steam and insect infestation: this is all public general nuisance, which it is reasonable to say should be taken care of by any developer. The public would want reassurance that these things were being dealt with—noise and all the sorts of things that could be considered to bring distress to neighbours in the operation of such a site.

**Q187 Amber Rudd:** Given that the Government’s localism agenda is intended to decentralise as much as possible, it is surprising to find that local communities do not have any power of veto. Do you think that is a contradiction?

**Lord Taylor:** I do not think the Localism Bill is designed to give local communities a veto on anything; it is designed to give local communities a role. The whole concept from neighbourhood planning upwards is about empowering local communities in the process. As local communities become more used to involvement and accepting this role, any development will have to take account of local sentiment. It would apply both to the developer’s consideration of the project in the first place, and the

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Secretary of State's consideration of the application when it was made.

**Q188 Amber Rudd:** Local communities might respond to that by saying, "If we have no voice in this to stop it, we do not really feel consulted. What is the point of consulting us if we cannot actually say no?"

**Lord Taylor:** They certainly have a voice: that is very much part of what the development process would allow for. What I was trying to express, perhaps inadequately, was the notion that local communities are going to become much better at expressing themselves. It will not need the creation of a "no waste near here" type campaign, because there will already be structures in place through which the local community will already have been involved in dialogue. That has been overridden by the current process, and the reason why the Localism Bill has been introduced has been to formally put local communities into thought processes. They do not have to be formally, institutionally involved—that is not necessary.

**Q189 Amber Rudd:** Local communities will be able to engage, insofar as influence the structure of the site, but they will not be able to say no?

**Lord Taylor:** I do not think they can at present.

**Q190 Amber Rudd:** No, they cannot. There is no change there?

**Lord Taylor:** No, there is no change there.

**Q191 Chair:** Where does localism fit in? What level of commitment do we give to localism?

**Lord Taylor:** I hope I said, Madam Chairman, in my answer to Ms Rudd, that empowerment of local communities means what it says: it gives local communities a sense that they have a real say, and not just a tokenistic say, in what goes on in their local areas. The fact that they do not have the power of veto does not reduce their voice.

**Q192 Amber Rudd:** They can influence design, location—that sort of thing?

**Lord Taylor:** Yes.

**Q193 Amber Rudd:** Whereas they cannot at the moment. There is more input allowed through the Localism Bill?

**Lord Taylor:** Well, on all planning applications under the Town and Country Planning Act. It is going to make a difference to the way in which local communities feel they can influence outcomes. Some of these facilities will be on existing sites. Some of these applications will be about the extension of a site that is already in existence. I would have thought this would give local communities a big opportunity—they may have grown to love their local site, I do not know—to be involved in a way they would not currently have.

**Q194 Chair:** Does it have to be in the neighbourhood plan? If it is not in the neighbourhood plan, will it be foisted on?

**Lord Taylor:** We are using words that are restrictive, like "veto" and "foisted". I do not see that as being the process. I hope this process is based on reason, argument and persuasion. After all, the applicant has every interest in making sure that the local community is supportive of the application. If I were an applicant, it would make the application that much more persuading if the local community were on side.

**Q195 Mrs Glendon:** Clearly, you have already touched on the role of Ministers, but what is the rationale for making the CLG Ministers responsible for deciding whether to approve large-scale hazardous waste infrastructure applications? Would it be better if Defra Ministers made these decisions? As the decisions on waste water infrastructure projects are to be made jointly by CLG and Defra Ministers, could the same joint approach be taken to the decisions on hazardous waste infrastructure?

**Lord Taylor:** Currently, planning applications are a matter for Communities and Local Government, so it would require a change if this were to become a Defra responsibility. I am not sure, frankly, whether Defra is keen to undertake this responsibility. We do not have the skill base for doing it, and while we might have the technical base for considering the needs case, we would not necessarily have the capacity for dealing with the actual planning application itself. There is bound to be cross-departmental consultation on such applications. They are strategically important—that is why there is a specific process for them—but it is probably best to define one individual, and in this case it is the Secretary of State for Communities and Local Government.

**Q196 Mrs Glendon:** We have talked about the confidence of the public in the process. Given the technical role of Defra, as opposed to the role of the Local Government Minister, would that joint approach give more confidence to the public that the process was being carried out in the best possible way for public safety? In keeping with the spirit of the Localism Bill, should not people feel that everything has been done to the utmost?

**Chair:** Minister, just to remind you that waste water infrastructure is treated on a joint decision basis.

**Lord Taylor:** Yes. One of the things that has already become clear to me in Government is the amount of cross-departmental consultation there is. Many issues are not clearly defined; they do not fit into neat boxes. Departments of State have to be discrete, but ultimately they can only work in consultation. It would be unusual for CLG not to involve Defra in consideration of things; because of the technical nature of some of the applications involved, the Defra skill base would be important.

The permitting process, which derives from the actual use of the site, is under the control of the Environment Agency. We mentioned the Environment Agency before in considering flood risk, and other matters. I cannot see this process being run away with by CLG without Defra being very much involved.

**Q197 Neil Parish:** What will be the role of Defra through the planning decision process? Will they just

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be a consultee? If they said, “We believe the system this company wants to operate to deal with hazardous waste is not safe,” how would that then be dealt with by the planning authority? Could the planning authority overrule Defra’s position?

**Lord Taylor:** If you say the Secretary of State for CLG is the responsible Minister, that means what it says. As I said in my previous answer, I cannot imagine this process ignoring Defra’s input, because of the nature of the technical expertise involved, the nature of the Environment Agency’s involvement in many of the things and Defra’s role in producing the NPS in this area. Defra would not have a veto.

**Q198 Neil Parish:** I am not saying Defra should have a veto. What is the formal process through the planning system? Is there a role? The local government departments may not have the necessary expertise: that is what we are talking about. I do not think they should have a veto, but they should have a strong role in this.

**Sabine Mosner:** We need to remember that the process itself is a new process, but it is a new process that will change again by the time this comes into effect. Not everything will have been tied down to every degree at the moment, but Alison may be able to shed a bit more light on the process.

**Alison Gadsby:** The Minister has already explained why it will be CLG that takes the decisions, and they are the experts on the planning system. We are talking about hazardous waste here, but there are a lot of wider planning aspects, which they have the best expertise to deal with. They will make their decisions on the basis of this National Policy Statement, which has been drafted by Defra, so that is a big Defra input. If, when they are considering an application for hazardous waste infrastructure, there is not sufficient clarity for them to make the decision, there is something difficult they want to discuss with Defra, then it is my understanding that they can do that under the new system.

**Q199 Chair:** Why has one procedure been decided under the same NPS structure for waste water infrastructure projects, where there will be joint decision making by Defra Ministers and CLG Ministers, and a separate procedure has been agreed for hazardous waste?

**Lord Taylor:** I can only surmise, but I think I might be able to help you Madam Chairman. The responsibility for water rests with Defra. Water is not going up a waste hierarchy.

**Q200 Chair:** Waste is Defra—they are both exclusively Defra.

**Lord Taylor:** Yes, but waste is not the end product in this process, whereas water is the end product in the case of waste water, and that remains with Defra.

**Andy Howarth:** Traditionally, CLG has had a role in waste planning. It is not unusual for them to continue to have a role in waste planning in this situation. I am not familiar with the water, but it might be slightly different. Certainly for waste, they have always had a role in waste planning.

**Dan Rogerson:** To give an example local to me, it was the Secretary of State at CLG who granted the final approval for the incinerator in Cornwall.

**Q201 Amber Rudd:** The Environmental Services Association was concerned that operators might be discouraged from developing new facilities if they feared that they could be undercut by operators using cheaper but possibly sub-optimal methods, either here or abroad. With this in mind, are you confident there is sufficient incentive for the industry to develop the new infrastructure set out in the NPS?

**Lord Taylor:** This goes right back to the whole business of whether the NPS is technologically neutral or not. It is indeed neutral, so there will be an incentive on operators to find methods that are effective and cost-effective in the process. I will accept that, but I do not see that as being undercutting; I see that as economic efficiency.

**Q202 Amber Rudd:** How will you ensure that the Environment Agency has sufficient resources for the enforcement procedures it will need to follow up with? Do you see that as an area of concern?

**Lord Taylor:** Not currently, but resources are an area of concern across the whole of Government at the moment. The advantage of this process is that it puts a framework in place whereby the participants have every incentive, through the committee process and everything else, to ensure they run tight ships. That must be in the interests of having a light inspection regime, based on proper self-management of these sites by the operators. Frankly, the risk of abuse of this process by an operator would involve huge financial consequences. Therefore, it is the right approach.

**Q203 Chair:** We will still observe the requirements of the European Union—the standards are very high—to ensure that there are no emissions and such.

**Lord Taylor:** The Environment Agency will have responsibility for ensuring that European regulations are met in respect of the operation of any waste plants.

**Q204 Barry Gardiner:** Minister, we rapped your Department over the knuckles when we looked at the waste water NPS and said that we thought there should be a higher profile in the discussion of any future NPSs. Can you indicate to us how you have taken that on board with the hazardous waste NPS? In particular, how was that helped by embarking on the consultation one week before Parliament broke up for its summer recess?

**Lord Taylor:** My experience of consultations is that they are never at the right time. It does not matter when you set them up—there is always a reason why it does not fit people’s diaries.

**Q205 Barry Gardiner:** The code of practice is what Defra has to adhere to, not somebody’s idea of the right time. The code of practice says that “formal consultations should take place at a stage when there is scope to influence the policy outcome. Consultations to influence the expected costs and benefits of the proposals should be designed to be

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accessible to, and clearly targeted at”—and so on and so forth. It is often a criticism that consultations are begun just when Parliament goes off on holiday, or, in this case, just when the public goes off on holiday. That cannot be amenable to getting the maximum input and raising the profile of the consultation on this NPS in the way we asked the Department to do when we made the recommendation previously.

**Lord Taylor:** You may have had an impact; you underestimate your influence, Mr Gardiner.

**Barry Gardiner:** I doubt it.

**Lord Taylor:** This particular consultation has gone on for 14 weeks, not 12, which is the statutory requirement, bearing in mind that two weeks' holiday is the customary amount of time that most people would be away. So there is a longer window than would normally be the case. It is not in the Government's interest to appear to steamroller this through. It wants maximum buy-in and it wants stakeholder involvement.

**Q206 Barry Gardiner:** My question was quite specific: what are the specific measures you have taken to ensure that this time, this consultation on the NPS has a higher profile than the waste water NPS?

**Lord Taylor:** We have had stakeholder events, we have had leaflets, and we have had evidence in libraries across the country at a public level. The stakeholder engagement has been considerable. From Parliament's point of view, we are having this session today within the consultation. The points raised by hon. Members will be taken into account as part of the consultative process. We take this Committee seriously because we recognise the expertise that it has.

I was not being facetious when I mentioned your influence. For the Government to extend the process by two weeks does not happen by chance; it must have happened as a response to the prompting you may well have given it. Parliament has been here for two weeks in September, so there has not been a total oasis of non-parliamentary involvement either.

**Q207 Barry Gardiner:** Could you provide the Committee with the details of those consultations and events that have taken place, in particular the numbers of people that have been involved, and how that has grown since the NPS on the waste water?

**Lord Taylor:** That would be very interesting. I cannot give you the figures at the moment, but at the end of the consultation it is normal for those individuals and organisations that have contributed to the consultation to be listed in the response to the consultative process. It would be interesting to see what impact taking a higher profile, as we have with this, will have had on the outcome. I would like to think that a lot of people have been involved, and that it has been productive. Documents such as those that have been produced are there to be improved.

**Chair:** Minister, we thank you very much for being so generous with your time and for participating, together with members of your team. We will obviously publish our report. We are still waiting for the formal response from your Department to the waste water policy strategy, which I understand is going to be given to us at the same time as the revised strategy. I am sure you will be interested to see our conclusions, and we will get them to you as quickly as possible. Thank you very much indeed. Thank you also to the Committee.

# Written evidence

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## Written evidence submitted by the Environmental Services Association (ESA)

### EXECUTIVE SUMMARY

1. ESA is the sectoral trade association for the United Kingdom's regulated waste and secondary resource management industry, a sector contributing £9 billion per annum to GDP. Our Members recover ever more of the value contained in the UK's waste—for example, household recycling has quintupled in the last decade—whilst protecting the environment and human health.

2. Our industry is willing to invest £10–20 billion over the next decade in new recycling and waste treatment facilities, infrastructure essential for the UK's transition to a zero waste economy. However, obtaining planning permission remains the single biggest barrier to the timely delivery of new waste management infrastructure.

3. The hazardous waste market is highly specialised differing markedly from the markets for the “general” commercial, industrial and domestic waste streams. However, specific guidance on planning for hazardous waste management infrastructure has been lacking.

4. ESA therefore welcomes the introduction of the proposed Hazardous Waste National Policy Statement and broadly considers it to be a sound framework for the Infrastructure Planning Commission's (IPC) decision making process.

5. The Strategy for Hazardous Waste Management (2010) has clearly provided the main basis for developing the National Policy Statement. We support the Strategy, however we are concerned that there is a risk that its aims will not be fully realised. ESA members have real concerns that some of the UK's hazardous waste is being diverted to facilities (both in the UK and in other EU Member States) which are below best environmental practice (bordering on “sham recovery” in some cases) in an effort to avoid the higher costs of dealing with waste responsibly within the UK's regulated, specialist hazardous waste treatment facilities. If the aims of the Strategy are not properly enforced, the industry may lack confidence to invest in the range of new infrastructure which the National Policy Statement seeks to deliver.

6. We nonetheless broadly support the policies contained within the National Policy Statement, particularly the Government's emphasis on a market led approach to investment in new infrastructure (2.5.5); the establishment of *need* (3.1); and recognition that hazardous waste might need to be transported further to be safely managed than other waste streams (2.3.6).

### PLANNING ACT THRESHOLDS

7. Whilst perhaps not directly relevant to the Committee's scrutiny of the National Policy Statement, the threshold for nationally significant hazardous waste infrastructure is too low: imposing the expensive IPC process on small items of such infrastructure would render them wholly uneconomic. Section 3.4.1 is therefore misleading: a 30k tonne contaminated soil washing plant could hardly be considered nationally significant infrastructure.

8. It is explicit in the Planning Act that an increase in annual input at an existing hazardous waste facility above the thresholds (of section 30(4)) would invoke an application to the IPC. However, it is unclear whether an extension of planning permission (eg extending a site's lifespan) or landfill void would invoke the IPC process in situations where such an extension represented a continuation at current input, even where this would clearly be of national significance. The National Policy Statement should provide guidance on this point so that developers would have certainty as to under which planning regime development falls.

### MATERIAL CONSIDERATION

9. The policies of the National Policy Statement are equally relevant to determination of hazardous waste management infrastructure under the town and country planning regime. It might therefore be helpful if the Government provided more guidance to local authorities on the practical application of paragraph 1.1.4.

### DEMONSTRATING NEED

10. ESA welcomes the Government's acknowledgment that the IPC should begin its assessment of relevant applications on the basis that need had already been demonstrated.

### HEALTH

11. The National Policy Statement clearly recognises that modern, well regulated hazardous waste management facilities deliver high standards of environmental protection and that protection of public health is achieved through stringent regulation.

12. However, even where a lack of actual impact is demonstrated, perception of health effects is also a material planning consideration, and significant weight can often be attached where the level of perception is elevated due to the vociferousness of a few objectors. The National Policy Statement would therefore benefit

from a clear statement that speculative assertions of health impacts unsupported by robust evidence should be given little weight by the IPC.

13. The requirement for applicants to carry out an assessment of *community anxiety and stress* (4.10.2) would appear a rather subjective process, and is unsupported by relevant Government guidance.

#### WASTE HIERARCHY

14. ESA supports the Government's commitment to the waste hierarchy and the delivery of the best overall environmental option. The hierarchy is asserted in a relatively flexible manner within the revised Waste Framework Directive enabling the management of specific waste streams to depart from the hierarchy where economic, environmental and technical factors are taken into account. Principle 1 of the Strategy requires hazardous waste to be managed to provide the best overall environmental outcome.

15. Paragraph 3.14.3 rather bluntly asserts that landfill is at the bottom of the hierarchy. Whilst this may be the case the National Policy Statement should note that landfill will continue to prove a viable disposal route for some hazardous waste that simply cannot be managed further up the waste hierarchy. Paragraph 3.14.3 might be better reconciled with 2.3.4 in this regard.

#### THERMAL DESORPTION

16. Paragraph 4.17.1 is not an accurate summary of thermal desorption and contradicts 3.4.6.

#### DESIGNATED SITES

17. ESA welcomes provisions which would allow the consideration of waste management development in designated areas (5.9.7). In some circumstances, the *in situ* treatment of waste might have an overall positive environmental impact when assessed against the alternative: transporting waste outwith the area. An appropriate example may be the temporary installation of in situ treatment plant at a contaminated land site.

26 August 2011

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#### **Supplementary written evidence submitted by the Environmental Services Association (ESA)**

We agreed to send the Committee some further detail on the ESA's position regarding planning costs. As the Committee knows, we are concerned that the costs associated with the IPC process can be disproportionate for some types of waste management development. While the IPC procedure is set through the Planning Act, the role of the NPS is important. The clearer and more robust the NPS can be, the less time that will need to be spent on hearings. Any ambiguity can result in extended hearing time or a judicial challenge.

December 2011

**Annex to the Environmental Services Association's supplementary written evidence**  
**THE IMPACT OF THE IPC REGIME ON THE COSTS FOR OBTAINING OPERATING AUTHORISATIONS FOR HAZARDOUS WASTE MANAGEMENT FACILITIES**

Development	Current costs				IPC costs			Revised total <sup>4</sup>	Cost of development			
	Planning cost <sup>1</sup>	Planning fee	Appeal cost	Permit cost <sup>1</sup>	Permit fee	Total	Planning fee <sup>5</sup>			Examination costs <sup>5</sup>	Venue cost <sup>2</sup>	IPC cost
<b>Actual examples</b>												
Soil treatment centre 100kt/a	£50k	£7k	N/A	£46k	£33k	£135k	£18k	£58k	£10k	£86k	£465k to £715k	£2.5 million
Stabilisation/solidification plant 100kt/a	£33k	£7k	N/A	£40k	£29k	£109k	£18k	£58k	£10k	£86k	£438k to £688k	£1 million
Waste Recovery Park	£155k	£30k	N/A	£100k	£83k	£368k	£35k	£174k	£15k	£224k	£1,062k to £1,562k	£50 million
500kt/a			Approved 4 month									
<b>Hypothetical examples based on experience and assuming public inquiry</b>												
Hazardous landfill 250kt/a	£150k	£65k	£500k to £1.00 million	£60k	£30k	£805k to £1.31 million	£35k	£174k	£15k	£224k	£964k to £1,464k	£8 million <sup>3</sup>
High temperature haz incinerator 60kt/a	£60k to £100k	£25k	£500k to £1.00 million	£100k	£45k	£730k to £1.27 million	£35k	£174k	£15k	£224k	£954k to £1,494k	£50 million
Thermal desorption 30kt/a	£60k to £100k	£25k	£250k to £500k	£40k	£33k	£408k to £698k	£18k	£58k	£10k	£86k	£469k to £759k	£2.5 million

1. Costs for preparation of the application
2. Cost of venue assumed at £500 per day. 20 or 30 days hearing.
3. Assume a landfill of eight cells at £1 million development cost per cell. Note that cells are normally progressively developed.
4. Sum of planning cost, permit cost and permit fee together with IPC cost and cost of preparing for and attending at a hearing of £250k to £500k for single commissioner and £500k to £1 million for a normal panel.
5. IPC fees are based on the published examination fees and Annex 2 of the NPS consultation.

**Written evidence submitted by The Chartered Institution of Water and Environmental Management (CIWEM)**

**BACKGROUND**

1. CIWEM considers that it is absolutely vital for hazardous waste management facilities to be available in the right places and best suited in terms of techniques for dealing with the current and anticipated hazardous waste arisings in the UK (including England) for the foreseeable future. The UK has witnessed much change in the types and quantities (and classification) of hazardous waste over the past 30 years or so, with more end of life wastes being classified as hazardous waste (eg un-depolluted end of life vehicles, waste electrical and electronic equipment) and a change in the emphasis of waste management practice, away from landfill. Traditional centres of industry feature less nowadays as locations where hazardous waste facilities are needed, as much municipal (household and commercial) waste now contributes to the overall quantities of hazardous waste produced, particularly for end of life products.

2. Much tighter standards for landfill and other forms of waste treatment, including thermal (incineration and pyrolysis) and intermediate treatments to neutralise and render waste less harmful, have provided us with a stronger basis for ensuring that wastes and hazardous wastes in England and the UK can be dealt with appropriately, safely and with confidence. This has partly been inspired by EU environmental legislation as well as progressive change in UK integrated environmental permitting. However, from time to time incidents do occur, occasionally with regrettable consequences both in terms of environmental pollution and human health and safety. These remind us that constant vigilance in siting and operation of such facilities is key to maintaining public confidence and environmentally sound management of our wastes. CIWEM recalls that the UK, as a developed nation, has long held a policy of not exporting hazardous or other wastes for final disposal in its policies on imports and exports of waste. Any national guidance should be consistent with and support such policies.

3. This overview leads CIWEM to consider that any new guidance for the planning and hence management of new hazardous waste facilities in England should be directed towards maintaining and improving the picture we have outlined in the most efficient and effective way possible. It is necessary to avoid a scenario where England (and the UK) falls short of its high standards and policies for hazardous waste management. Delays in implementing needed facilities should be kept to a minimum, guidance directed to decision makers should be clear and unambiguous to ensure their decision making is considered, authoritative and can be expedited. CIWEM also understands the necessity of ensuring that planning decisions are taken in context with other approvals with respect to environmental permitting and health and safety that provide the overall framework of protection to the environment, workers and the public. This can be problematic. It is therefore imperative that the Infrastructure Planning Commission (IPC) or any successor arrangement to it, is clearly directed in guidance on decisions on critical infrastructure that do not confuse or conflict with the responsibilities of other competent authorities and agencies involved in the process of controlling hazardous waste facilities once a determination of approval to site a such a facility has been granted.

4. In the context of the above, CIWEM's comments on the Defra consultation package at this stage are confined mainly to the key document, the Draft National Policy Statement for Hazardous Waste (in annex 1 of the consultation package) and as such, they relate in general mainly to questions 1 to 9 of the Defra consultation package. We may make further comment on other aspects of the whole package in any response CIWEM subsequently makes to Defra on this issue. For the sake of brevity in this submission CIWEM does not comment on matters in the Policy Statement it finds itself broadly supportive of (eg the major hazardous waste types of interest).

**COMMENTARY ON DRAFT NATIONAL POLICY STATEMENT FOR HAZARDOUS WASTE**

*General Observations*

5. CIWEM finds that the Draft National Policy Statement (draft NPS) is a little laborious to read and its overall readability could be improved by reducing some of the more repetitious language. Further clarity could be provided by signposting better to the reader to whom any advice is intended. The document itself indicates it is on the whole directed to the IPC, yet it is also clear that applicants themselves are addressed and should heed the guidance. This document should be precise in indicating its intended readership and where this is in the document. Section 1 of the Policy Statement should be more explicit about this at an early stage.

*Specific Commentary*

6. *Section 1—Determination of eligibility for consideration by IPC:* The draft NPS refers to the trigger quantities (landfill/deep storage of more than 100,000 tonnes per annum or other cases 30,000 tonnes per annum) of waste processed that would require consideration of determination of an application by this route. Yet it is particularly unhelpful about what constitutes the trigger quantity to be interpreted from the Planning Act 2008. This may have a significant bearing on how an application is dealt with and could cause delays. For example the draft NPS specifically instances ship recycling facilities. At such facilities the vast majority of the waste is steel, with some smaller amounts of hazardous waste associated with a ship for recycling, most likely, say, asbestos and fuels and oils of the order of a few per cent of the total quantity by weight of the ship. Clarity is needed in how to interpret the meaning of hazardous waste with respect to such matters.

7. *Sections 2.1 and 2.3.5—the Proximity Principle and other relevant Government Policies:* The section on the proximity principle is not explicit in referring to the UK's international obligations with respect to the imports and exports of waste, while reflecting the general tenor of them. The EU Waste Shipments Regulation, 2006, as amended and the Defra policy on imports and exports (the UK Plan for shipments of Waste, 2007), alongside the Waste Framework Directive, 2008, provide a clear exposition of UK obligations and are therefore essential drivers for the determination of applications. These should be read alongside factors concerning proximity as the UK Plan implements the long-standing UK policy of self-sufficiency in the disposal of waste, by strictly limiting when waste may be shipped to or from the UK for disposal. The proximity principle even as applied in the national sense must impact on the overall justification of need in the context of self-sufficiency. A similar argument applies to the cross border boundary issues (England v Wales, Scotland etc).

8. *Section 4.7.9—Grounds for Refusal of Consent:* This section of the draft NPS states that the IPC should not refuse consent on the basis of regulated impacts unless it has good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted. This may lead to a potentially confusing and even harmful situation. This may also be the case for the organizations, who will be required to liaise with the IPC and spend a great deal of time on an application, in order to provide sound advice worthy of such an important application.

9. *S4.1.1—Relationship between planning and environmental permitting:* The document does little to improve the really difficult grey area between planning and environmental permitting that Planning Policy Statement 23 should have addressed but arguably failed to do. This document may actually complicate the issue further as S4.1.4 states that "...the IPC should take into account environmental, social and economic benefits and adverse impacts, at national, regional and local levels." However, the purpose of environmental permitting is to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular: without risk to water, air, soil, plants or animals; without causing a nuisance through noise or odours; and without adversely affecting the countryside or places of special interest (Waste Framework Directive, 2008). This is the responsibility of the Environment Agency as regulator. CIWEM considers this is not fully acknowledged in the document. Many of these aspects are intimately linked with the variety of assessments that are required to accompany an application and cannot be addressed separately. The document advocates close liaison with the Environment Agency over some of these issues. As there is a continuum of issues to be addressed, it would seem preferable for the planning decision and the environmental permit to become one process and be judged with one document in the case of hazardous waste facilities considered here, fulfilling two roles, as is suggested in S4.9.1 in relation to the Health and Safety Executive. (One benefit of this proposal may be that the Environment Agency could charge for this permit and may therefore provide the right degree of advice at this important stage.) The assessments required for the provision of such advice are lengthy and detailed, and, in the case of landfilling, errors are likely to cause problems for hundreds or thousands of years and therefore affect future generations.

10. *Climate Change Considerations:* Locating a hazardous waste facility in a flood risk zone, whatever the need, might be considered at best unwise, if not foolish. Instances of flooding of such facilities have occurred in England and are not without potential for significant hazard. It seems that the guidance on this topic conflicts with that given on climate adaptation, where we are advised to anticipate more extreme weather events.

#### *The IPC, its expertise and resources*

11. Hazardous waste and its management is a cross cutting multi-disciplinary business that requires a detailed understanding of many technical fields by those undertaking it. So must those who make judgements about its suitability and siting. Although perhaps not central to the brief, CIWEM is keen to ascertain that the IPC, or any successor arrangement, has at its command the necessary resources and expertise to make sound authoritative decisions on behalf, in effect, of the public, the applicant and the environment. The value of any guidance would be negated were this not to be the case. Our commentary on Grounds for Refusal of Consent above is germane to this point.

This response has been prepared by members of CIWEM's Waste Management Panel.

August 2011

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### **Written evidence submitted by the Environment Agency**

#### **1.0 INTRODUCTION**

1.1 The Environment Agency is a statutory consultee for the preparation of all National Policy Statements (NPSs) and for all applications for Development Consent Orders. We are a consultation body for the Environmental Impact Assessments that will accompany most applications. We are working closely with Defra on the development of the Hazardous Waste NPS and its Appraisal of Sustainability (AoS).

1.2 We are the Government's environmental regulator for the waste industry. We will be responsible for issuing environmental permits for projects seeking Infrastructure Planning Commission (IPC) consent.

1.3 We are a competent authority for the implementation of the Waste Framework Directive which aims to protect and improve the environment. The NPS will help to achieve these aims.

1.4 We believe the draft NPS clearly sets out the need for hazardous waste facilities and includes a robust set of policies for the IPC to use when considering applications. We believe that it will help to deal with various types of hazardous waste being produced. Overall, we support the assessment methodology and generally agree with the findings and recommendations of the AoS.

## 2.0 NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS

2.1 As identified in the NPS, there are factors that are likely to result in an increase in hazardous waste volumes and the requirement for specialised treatment. Representatives from the waste management industry were approached and provided feedback in the lead up to the preparation of the draft NPS. We provided advice and data from 2008 (the latest available at the time of drafting) to Defra on hazardous waste management. Data from 2009 and 2010 is now available which we are actively sharing with their officials.

2.2 We agree that the types of infrastructure outlined in the draft NPS are required and believe that it will help drive hazardous waste up the waste hierarchy. We supported Defra in the development of the Strategy for Hazardous Waste Management which has provided a framework for the NPS.

2.3 From Autumn 2011, hazardous waste producers will be required to consider the waste hierarchy when considering options for managing their waste which is likely to increase the need for recycling and recovery facilities. All types of facilities in the NPS, (other than landfill) promote recycling and recovery of hazardous waste in line with the waste hierarchy. There will be a need for hazardous waste landfill for the foreseeable future, for example, for residual wastes or wastes where no recovery options are available.

2.4 Technologies that may be developed have not been identified in the NPS. We will suggest that the NPS is made clearer to emphasise support for the development of new technologies.

2.5 We believe that the key principles to inform the assessment of future hazardous waste infrastructure development applications have been set out. We strongly agree with the encouragement for early contact with the relevant regulator.

2.6 The Strategy for Hazardous Waste Management has set out the types of infrastructure needed without going into detail on the types of technologies that would fulfil these requirements. We believe that this gives the necessary flexibility to business who have the expertise in the development of technologies to treat waste. We suggest that the alternatives within the Environmental Statement for each project could include emerging technologies for the proposed project.

2.7 We welcome the encouragement that facilities should be as durable and adaptable (including taking account of natural hazards such as flooding) as they can be.

## 3.0 ENVIRONMENTAL IMPACTS OF HAZARDOUS WASTE DEVELOPMENT

3.1 We are generally content with the sections on the generic impacts. We will discuss with Defra officials how minor changes could clarify some of the text. We welcome the section on air quality and suggest that the section on biodiversity (5.3) could reflect the Natural Environment White Paper by referring to the value of nature being at the heart of decision making.

3.2 The section on flood risk could be strengthened by referring to the IPC's use of requirements such as conditions and obligations to control flood risk from all sources, similar to the text in 5.15.8.

3.3 We welcome the inclusion of footnote 75 (page 54, section 5.10.17) on land use. We believe that this section could be strengthened by providing further clarity on threats from land contamination; to workers during development, buildings, adjacent properties, final occupiers and to the wider environment.

3.4 We strongly support the section on water resources and quality (5.15) and suggest that the encouragement for applicants to locate infrastructure which presents a high risk away from receiving waters (5.15.2) is repeated in the IPC decision-making principles (5.15.5).

3.5 We agree that the draft Hazardous Waste NPS considers all the significant impacts of hazardous waste development and that the Government should formally approve ("designate") the draft Hazardous Waste NPS after taking account of representations received during the consultation period.

## 4.0 APPRAISAL OF SUSTAINABILITY (AoS) REPORT

4.1 We believe that the appraisal identifies the likely significant sustainability effects associated with the draft Hazardous Waste NPS. We do not consider that any further measures are necessary to prevent, reduce or offset likely significant effects. The NPS has correctly identified where further measures fall under the control of the environmental permit.

4.2 We believe that the appraisal identifies the reasonable alternatives to the policy contained within the draft Hazardous Waste NPS. We consider that cumulative impacts are generally covered well. We agree that attention should be drawn to the uncertainty of some of these impacts, for example location.

4.3 We welcome the proposals for monitoring. We note that the Environment Agency is named as a source of monitoring information for several categories. In some cases this is not monitoring that we currently routinely carry out, and so it would have increased resource implications if it continued to be required. We are actively discussing potential implications with Defra.

4.4 It is possible that impacts on water quality from the implementation of the Hazardous Waste NPS would be significant. We suggest that a measure on water quality is included in the monitoring proposal and that this is formed by data the Environment Agency already gathers.

4.5 We agree that other monitoring should be considered to ensure that positive effects from the NPS are achieved and maintained. Significance of effects can change over time, and we would encourage periodic monitoring of all AoS objectives. We would welcome the publication of a separate detailed monitoring strategy, as has recently been produced for the Energy NPSs.

4.6 We note that many “minor positive” findings have been observed. We would welcome further clarification of how these conclusions have been reached. We would expect more “uncertain” findings and suggest reviewing the assessment for uncertainties, such as location. This particularly applies to flood risk and coastal processes.

*August 2011*

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#### **Written evidence submitted by the Department for Environment, Food and Rural Affairs (Defra)**

As part of your scrutiny of the National Policy Statement for Hazardous Waste you have asked for additional information on the apparent conflict between the central decision making policy set out in the Planning Act/ this NPS and the move towards local decision making under the Localism Bill. You have also requested information on the relationship between the NPS and the National Planning Policy Framework.

#### **LOCALISM AND THE PLANNING ACT 2008**

The Localism Bill is about devolving decision-making to the most appropriate level. It will shift power from central government into the hands of individuals, communities and councils. Most planning decisions will be decided locally. However there are a small number of key decisions to be taken on major infrastructure projects which, due to their national importance, need to be taken at a national level. As these decisions affect the national interest, it is right that they should be taken by democratically accountable Ministers taking into account both local impacts and national need.

Nevertheless, it is important that local communities have the opportunity to have their say on these major projects. The Planning Act 2008 introduced a statutory requirement for promoters (applicants) to consult local communities and other key groups at pre-application stage, thus providing the opportunity to influence the proposals. The purpose of the pre-application procedure is to flush out any significant issues with the proposal at an early stage, which should result in a better application coming forward.

When deciding how to go about consulting the local community, promoters must take into account the views of the local authorities and are required to publish a statement describing how they will consult the local community. The promoter will need to carry out consultation in accordance with the statement, and responses to consultation need to be taken into account by the promoter when taking the proposed application forward. When submitting the application to the Infrastructure Planning Commission (IPC), the promoter must inform the IPC of the results of the consultation.

The IPC will then consider whether the promoter has complied with the consultation requirements and will reject applications which it concludes have not been subject to adequate consultation. In reaching its decision the IPC must have regard to any representations about the adequacy of the consultation received from the local authorities consulted by the promoter.

Once an application is accepted by the IPC, the promoter must publicise this and invite anyone with an interest in the proposal to register with the IPC. Relevant local authorities need to be notified and the IPC will invite them to prepare a local impact report. All interested parties will be invited to the preliminary meeting, which marks the start of the examination stage, and will be sent copies of representations made and invited to hearings where they have further opportunity to have their say.

So the views of local communities will be well represented in the process and properly taken into account when the final decision is made. The final decision will be made by elected Ministers taking into account the views expressed by local people and the needs of the nation.

#### **NATIONAL POLICY STATEMENTS AND THE NATIONAL PLANNING POLICY FRAMEWORK**

The National Policy Statements (NPSs) on major infrastructure and the National Planning Policy Framework (when finalised) have different roles in the planning system.

National Policy Statements for major infrastructure set out the framework for decisions on applications for development consent under the separate regime for major infrastructure established under the Planning Act 2008. Under this regime, decisions must be made in accordance with a relevant NPS unless one of the exceptions set out in section 104(4) to (8) applies.

Policy in the NPS on how the impacts of development should be assessed and how they should be taken into account in decision making has been based on relevant planning policy set out in Planning Policy Statements and older-style Planning Policy Guidance. This is to ensure that there is no inconsistency between planning policy applied to above threshold developments and that applied to below threshold developments. This policy is also current planning policy.

When finalised, the National Planning Policy Framework will set out the Government's economic, environmental and social planning policies for England. Taken together, these policies will articulate the Government's vision of sustainable development, which should be interpreted and applied locally to meet local aspirations. The policies set out in this Framework will apply to the preparation of local and neighbourhood plans, and to development management decisions on applications for planning permission under the Town and Country Planning regime.

The draft National Planning Policy Framework streamlines existing planning policy into a consolidated set of priorities. It sets out the Government's requirements for the planning system only to the extent that it is relevant, proportionate and necessary to do so. However, it remains broadly consistent with current planning policy and with those elements of the NPS dealing with planning policy on the impacts of development. Detailed waste planning policies are not included in the draft National Planning Policy Framework and instead continue to be addressed by Planning Policy Statement 10 (PPS10). The policies in the NPS remain broadly consistent with PPS10.

29 September 2011

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**Further written evidence submitted by the Department for Environment, Food and Rural Affairs (Defra)**

When Defra officials met the Efra Committee on 6 September for an informal briefing session on the National Policy Statement for Hazardous Waste, we promised to provide further information on the Exception Test set out at paragraphs 5.7.13–15 of the NPS and on the planning regimes for similar large-scale infrastructure in the devolved administrations.

You asked whether the Exception Test set out in the NPS is drawn from pre-existing planning guidance. We can confirm that this is the case and the text in the NPS is based on that set out in Planning Policy Statement 25 on development and flood risk. That guidance states that, if, following application of the Sequential Test in Annex D, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones of lower probability of flooding, the Exception Test can be applied. The Test provides a method of managing flood risk while still allowing necessary development to occur.

PPS25 explains that the Exception Test is only appropriate for use when there are large areas in Flood Zones 2 and 3, where the Sequential Test alone cannot deliver acceptable sites, but where some continuing development is necessary for wider sustainable development reasons, taking into account the need to avoid social or economic blight and the need for essential civil infrastructure to remain operational during floods. It says that it may also be appropriate to use it where restrictive national designations such as landscape, heritage and nature conservation designations, eg Areas of Outstanding Natural Beauty (AONBs), Sites of Special Scientific Interest (SSSIs) and World Heritage Sites (WHS), prevent the availability of unconstrained sites in lower risk areas.

It goes onto explain that for the Exception Test to be passed:

- (a) it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared;
- (b) the development should be on developable previously-developed land or, if it is not on previously developed land, that there are no reasonable alternative sites on developable previously-developed land; and
- (c) a Flood Risk Assessment must demonstrate that the development will be safe, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

The minor differences between the NPS and PPS25 can be attributed to the fact that the PPS25 text is directed at both plan making and decision making whereas the NPS is a framework for decision making. There should be no difference in the way in which the exception test is applied to applications under the Town and Country Planning Act and applications under the Planning Act 2008 regime. The draft National Planning Policy Framework, currently being consulted on, streamlines planning policy PPS25 into a consolidated set of priorities. It will retain the key elements of the policy including the exception test based on similar principles.

The draft NPS relates to England only and you asked how the planning regimes for similar large scale infrastructure projects in the devolved administrations compare. None of the devolved administrations have an

equivalent to the NPS. All the devolved administrations aim to ensure the provision of appropriate facilities to manage the hazardous waste they produce but, with a recognition that range of facilities required for hazardous waste and the economies of scale required for each of these mean that cooperation with other parts of the UK remains essential. There is freedom of movement of waste, including hazardous waste within the UK and it is recognised that some hazardous waste arising in Scotland, Wales or Northern Ireland will be managed in facilities in England and potentially vice-versa. Potential developers will take account of a number of factors in determining suitable locations for new facilities including transport connections and proximity to arisings. In the UK by far the greatest percentage of hazardous waste arises in England (over 80%) and it is therefore likely to be advantageous to industry to locate facilities in England irrespective of the planning system.

September 2011

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**Supplementary written evidence submitted by the Department for Environment, Food and Rural Affairs (Defra)**

Your letter of 18 October sought responses to a number of questions following Lord Taylor's oral evidence on 11 October.

You ask about the most recent assessment of the capacity of installed and planned hazardous waste treatment facilities in England. In *A Strategy for Hazardous Waste Management in England* published in 2010 Defra made an assessment of the new facilities needed to push the management of hazardous waste up the hierarchy. This was based on information supplied by the Environment Agency and industry on existing facilities, coupled with an assessment of what more is needed. As this assessment was so recent, we do not plan to formally update it before the NPS is published, but we do intend to look very carefully at any comments from consultees about the new facilities that may be needed with a view to updating the list of facilities set out in the NPS where this is justified.

Section 30(4) of the Planning Act 2008 sets out the thresholds at which alterations to existing hazardous waste facilities would be caught by the major infrastructure (IPC) regime. For landfill this is an increase in capacity of more than 100,000 tonnes per year. So, where an existing landfill site with a capacity of over 100,000 tonnes per year has a time limited planning permission, an application to renew that permission will fall under the Town and Country Planning regime because there is no increase in capacity. In the case of a void extension for an existing hazardous waste landfill site, applications will fall under the IPC regime where they involve an increase in capacity of more than 100,000 tonnes per annum and under the Town and Country Planning regime where the increase in void space increases capacity by less than 100,000 tonnes per annum.

Section 35 of the Planning Act provides that, where the Secretary of State thinks a hazardous waste development project is of national significance either by itself or when considered with one or more other proposed projects in the same field, he/she may direct that the application be considered under the major infrastructure regime. Section 35(9) requires the Secretary of State to give reasons for any such direction. There is no formal guidance on the factors that the Secretary of State should take into account in making this decision. In terms of infrastructure for hazardous waste, we would expect the decision to be made on the basis that the proposed facility would serve national, rather than regional/local needs. Section 35(8) allows the Secretary of State to request any information needed to decide whether or not to grant a direction.

Whole-life costing is not a new concept. It has been extensively used in Private Finance Initiative projects for several years and in 2003 the then Office of Government Commerce issued *Construction Procurement Guidance No 7 on Whole Life Costing*. While such guidance has been geared towards public sector construction clients, whole-life costing is also relevant to private sector developments and is used routinely in the business world. We do not believe that whole life costing should cause any difficulty to potential developers but will, of course, look carefully at any comments made by consultees in respect of this issue.

In terms of the steps Defra has taken to publicise the consultation, we took note of the comments made by the Committee in respect of consultation on the Waste Water NPS to ensure that as wide an audience as possible was made aware of our consultation on the draft National Policy Statement for Hazardous Waste. We circulated a leaflet containing information about the consultation to the Society for Chief Librarians for display in approximately 4000 libraries in England. In addition, as well as publishing the full consultation on the Defra website, the consultation was publicised by means of a summary sheet about the NPS on the Planning Aid website at [http://www.planningaid.org.uk](#). (Planning Aid England provides free, independent and professional planning advice to communities and individuals who cannot afford to pay professional fees.)

We offered the possibility of stakeholder events both here and in the regions and asked for expressions of interest. Relatively few people expressed an interest, possibly because the NPS is non-locationally specific and less likely therefore to attract the attention of the general public. For those who expressed an interest, a public stakeholder event on the NPS was held on 26 September in Ergon House London. This was attended by seven people. The general public is likely to be more interested in commenting on specific development proposals once locations are known. Under the Planning Act, the applicant must consult on their proposals before finalizing them and submitting an application. Before the IPC (or in future the major infrastructure unit) can decide to accept an application for examination, it must be satisfied that the applicant has met the consultation

requirements. The purpose of these requirements is precisely to give local communities (and other consultees) the opportunity to influence the proposals before they are finalised.

We engage regularly with industry stakeholders (main trade associations) so most were aware of the NPS before consultation. In addition, we held a meeting of the Hazardous Waste Forum (HWF) to discuss the NPS on 12 September in London. The HWF is made up of representatives both from the hazardous waste management industry and those who produce hazardous waste. We invited the main trade associations and most accepted.

In addition there are two issues on which we think it would be helpful to provide some additional information to provide further clarity.

In Q.163 the Chair suggests the average costs of preparing an application are six to twelve times more than the costs of other procedures and asks whether that is an accurate figure. As the Minister suggested, we cannot easily judge overall costs. There have yet to be any applications for hazardous waste facilities under the new regime, so it is too early to draw conclusions about relative costs. However, we do believe that the new Planning Act regime offers some potential for administrative savings. The Consultation Stage Impact Assessment produced for the Hazardous Waste NPS indicated that administrative savings would be accrued at the examination stage by promoters of typical waste schemes under the new Planning Act regime. This is based on projections that, under the new regime, the length of examination for a typical waste facility will fall from 12 months under the status quo to six months, with the corresponding reduction in costs. Admin savings of up to £200,000 are thus expected to be realised by developers of typical waste schemes at the examination stage.

In Questions 195 and 200, the Committee asks why it has been agreed that decision making for waste water infrastructure projects should be made jointly by CLG and Defra Ministers, whereas we are proposing that only CLG Ministers take the decisions for hazardous waste infrastructure. Lord Taylor explained that CLG Ministers taking decisions on hazardous waste infrastructure simply maintains the status quo. The position is slightly different for waste water infrastructure projects because applications may be submitted by statutory water and sewerage undertakers and section 266 of the Town and Country Planning Act requires that decisions on applications from statutory undertakers are undertaken jointly by CLG and Defra. To have allowed decisions for major waste water infrastructure to be taken solely by CLG Ministers would have meant a change to current practice and also would have meant that there would be a different approach for applications for major infrastructure and those below the threshold and which would still be subject to joint decision making under the Town and Country Planning Act.

1 November 2011

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**Further supplementary written evidence submitted by the Department for Environment,  
Food and Rural Affairs (Defra)**

**HAZARDOUS WASTE TREATMENT CAPACITY**

You ask for information on the most recent assessment of capacity of hazardous waste facilities in England. The most recent assessment is set out in Annex 2 of the 2010 Strategy for Hazardous Waste Management for England.

<http://archive.defra.gov.uk/environment/waste/topics/hazwaste/documents/policy.pdf>

You mention that CIWM's response suggested the assessment of need in the 2010 Hazardous waste Strategy for England was based on work carried out by the Hazardous Waste Forum Treatment and Capacity Task Force in 2004. In fact this is not correct. The starting point for the assessment in the 2010 Strategy for Hazardous Waste Management in England was the assessment of need in the hazardous waste annex (c9) of the 2007 Waste Strategy for England and which had been drawn up on the basis of then current arisings data and information provided by industry. See: <http://archive.defra.gov.uk/environment/waste/strategy/strategy07/> However, further work to establish need for inclusion in the 2010 Strategy was undertaken in 2009. In particular, public consultation showed that the needs set out in the 2007 Waste Strategy had changed over time so we invited Defra's Hazardous Waste Steering Group, which comprises representatives from the Environment Agency, CIWM, ESA and the Oil Recycling Association (ie day to day operators, developers of facilities and the experts in the field) to consider the types and numbers of facilities that they considered were needed as a result of the implementation of the Strategy. This work identified the need for new facilities to enable certain hazardous waste streams to be managed higher up the waste hierarchy.

In preparing the needs case for the National Policy Statement, we drew out the waste streams for which the 2010 Strategy had identified a need to manage larger amounts of hazardous waste. We looked again at these waste streams and any additional information available to us (for example, we obtained more detailed information from the Environment Agency about the amounts of contaminated soil likely to lend themselves to treatment) before setting out the needs case for nationally significant infrastructure.

In terms of the 2004 Hazardous Waste Forum Task Force report, this is still available from the National Archives website (see: <http://webarchive.nationalarchives.gov.uk/20081105144808/http://www.defra.gov.uk/environment/waste/hazforum/index.htm>). Given its age it is of little use in determining current need. Not only

does it predate the requirements for managing hazardous waste in accordance with the waste hierarchy as set out in Waste Directive 2008/98/EC, it also predates the 2005 change in the definition of hazardous waste. In any event the approach taken in the report did not provide a clear picture of need even at the time and that is why we took a different approach to determining need for the purposes of the 2010 Strategy. We believe that the needs case set out in the 2010 Hazardous Waste Strategy represents the best estimate we currently have of facility need. Responses from consultees suggest that they generally support this assessment and the CIWM itself described the assessment as valid and capturing the present need for nationally significant infrastructure.

*22 November 2011*

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